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Trial

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 00243 SHS

5 ANDREW OWIMRIN, a/k/a "Andrew Owens,"  
6 a/k/a "Jonathan Stewart," and  
7 SHAHRAM KETABCHI, a/k/a "Steve Ketabchi,"

Defendants.

8 -----x

November 1, 2018  
9 9:15 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge  
13 and a jury

14 APPEARANCES

15 GEOFFREY S. BERMAN,  
16 United States Attorney for the  
17 Southern District of New York  
18 KIERSTEN ANN FLETCHER,  
19 ROBERT BENJAMIN SOBELMAN,  
20 BENET JEANNE KEARNEY,  
21 Assistant United States Attorneys

22 SAM A. SCHMIDT,  
23 ABRAHAM JABIR ABEGAZ-HASSEN,  
24 Attorneys for defendant Owimrin

25 KENNETH A. PAUL,  
JACOB MITCHELL,  
Attorneys for defendant Ketabchi

Also Present:

CHRISTOPHER BASTOS, Detective NYPD and HSI  
CHRISTINE LEE, Paralegal USAO  
SAMUEL TUREFF, Paralegal

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1 (Trial resumes)

2 (In open court; jury not present)

3 THE COURT: Good morning. Please be seated. The  
4 jurors are here. The government has rested. Mr. Schmidt, is  
5 it your intention today to put on a case and to have  
6 Mr. Owimrin to testify?

7 MR. SCHMIDT: Yes, your Honor, but before Mr. Owimrin  
8 testifies, our paralegal is going to testify as to summary  
9 charts.

10 THE COURT: Have you shown them to the government?

11 MR. SCHMIDT: Yes, the government has them.

12 THE COURT: I want to talk to your client now about  
13 his testifying, Mr. Schmidt. I want to talk to your client now  
14 about his decision to testify.

15 Mr. Owimrin, if you would stand, sir.

16 There are certain decisions that in the course of the  
17 trial that are for the attorney to make, Mr. Schmidt to make;  
18 for example, what witnesses to call, if any, what questions to  
19 ask the government's witnesses, what questions to ask the  
20 defense witnesses if there is a defense case, what motions to  
21 make pretrial. Those decisions and others like them are really  
22 decisions for the lawyer to make.

23 There are certain important decisions, though, that  
24 are for you, the client, the defendant, to make. One of those  
25 important decisions that are for the client, not the lawyer to

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1 make is whether or not you, the client, the defendant in this  
2 case, wishes to testify on your own behalf. Do you understand  
3 that, sir?

4 DEFENDANT OWIMRIN: Yes.

5 THE COURT: So have you spoken with Mr. Schmidt about  
6 whether or not you're going to take the stand and testify here?

7 DEFENDANT OWIMRIN: Yes, your Honor.

8 THE COURT: If you had questions, did he answer any  
9 questions you had about that issue?

10 DEFENDANT OWIMRIN: Yes.

11 THE COURT: Okay. Don't tell me what his advice was.  
12 That's attorney-client, that is privileged, that is between you  
13 and Mr. Schmidt.

14 What I want to tell you is I want you to have listened  
15 to that advice. That doesn't mean you have to follow it, but  
16 he is your lawyer, his sole interest is you, so listen to him,  
17 but ultimately whether or not you are going to testify is your  
18 decision. Do you understand that?

19 DEFENDANT OWIMRIN: Yes, sir.

20 THE COURT: Do you have any questions of me about that  
21 issue?

22 DEFENDANT OWIMRIN: No, sir.

23 THE COURT: What is your decision, sir, do you wish to  
24 testify in your own defense or not?

25 And, by the way, if you don't testify, I am going to

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1 instruct the jury that a defendant is under no obligation to  
2 put on any evidence because the burden of proof is always on  
3 the government, and if you do not testify, the jury cannot draw  
4 any inference from the fact that you've decided not to testify.

5 Do you understand that?

6 DEFENDANT OWIMRIN: I understand.

7 THE COURT: What is your decision, sir?

8 DEFENDANT OWIMRIN: I will testify today, sir.

9 THE COURT: You do want to testify?

10 DEFENDANT OWIMRIN: Yes.

11 THE COURT: Thank you very much. Let's bring the jury  
12 in.

13 MS. FLETCHER: Your Honor, there is one additional  
14 issue before the jury comes in.

15 MS. FLETCHER: I notice AUSA Sobelman is no longer  
16 sitting at the table. We expect he will not be for remainder  
17 of the trial, which may prompt some curiosity or questions  
18 among the jurors. We request your Honor tell the jurors that  
19 he is attending to another matter and to not speculate and to  
20 move on.

21 THE COURT: If that is what you want. You want me to  
22 tell them he is not going to be here, he is working on another  
23 matter, and they can draw no inference from the fact he is not  
24 here?

25 MS. FLETCHER: Yes, that would be our request.

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1 THE COURT: Fine. Defense, I take it you have no  
2 objection?

3 MR. PAUL: No. Judge, I know the jury is lined up,  
4 but there is an issue that has to be brought to your Honor's  
5 attention immediately.

6 First of all, I think as your Honor may or may not  
7 know, we put in a request for authorization of an expert. The  
8 problem is he is coming from the other side of this country,  
9 from Washington. The government is --

10 THE COURT: Washington State?

11 MR. PAUL: Correct. I wish it was Washington, D.C.

12 The government is unwilling to stipulate. It has to  
13 do with an IP address concerning Jane Thompson. The jury has  
14 been shown an email and follow up to that email that has Arash  
15 Ketabchi with positive faith, my client's email address.

16 What we wanted, because the government obviously  
17 objects to save everybody time and expense and everything, that  
18 IP address, if located, would not be located in California.  
19 That is what our expert is always going to be testifying to, so  
20 we asked for a stipulation from the government. They refuse.  
21 So, consequently, we are asking for an authorization for this  
22 expert to come in for that limited purpose.

23 THE COURT: That sounds a bit absurd. Let me see if I  
24 can understand it. I didn't think IP addresses are located  
25 anywhere physically. I thought they're kind of located up

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1 there somewhere along with Instagram posts.

2 MR. PAUL: I am like you, your Honor. Maybe  
3 Mr. Mitchell can explain just briefly.

4 MR. MITCHELL: Well, your Honor, an IP address, it  
5 shows where an internet connection is occurring. So it is  
6 similar, you can think of it almost as a zip code in a sense.  
7 It is going to give you a general location.

8 From an IP address, you can tell if someone is doing  
9 something from a particular computer, they might be doing  
10 anything from a particular computer. So in this case, the IP  
11 address would show that the contract that was sent to a victim  
12 was sent from the metropolitan area, not California where our  
13 client was located. So it is significant --

14 THE COURT: Wait just a minute. The computer on my  
15 desk --

16 MR. MITCHELL: Yes, your Honor.

17 THE COURT: -- that is the tower I am told that is  
18 under my desk, it has a specific IP number.

19 MR. MITCHELL: Yes, your Honor.

20 THE COURT: And presumably there is some record now  
21 that this IP address is being used. Is that right?

22 MR. MITCHELL: Yes, your Honor, okay.

23 THE COURT: If I take this tower and bring it to  
24 California and plug it in there, the IP address will show as  
25 being used in California?

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1 MR. MITCHELL: A different IP address, your Honor.

2 THE COURT: The same computer.

3 MR. MITCHELL: Yes.

4 THE COURT: Doesn't the IP address go with the  
5 hardware?

6 MR. MITCHELL: The IP address goes with the router.

7 MS. FLETCHER: Your Honor --

8 MR. MITCHELL: The internet connection.

9 THE COURT: The internet connection?

10 So you say the IP address on an email would show where  
11 the internet connection is taking place. Is that the idea?

12 MR. MITCHELL: Right. The IP address would show where  
13 that communication occurred from and it connects to a specific  
14 geographic location.

15 THE COURT: All right. The government?

16 MS. FLETCHER: Your Honor, that may be the case, but  
17 it is not always the case. So, for example, if I use my phone  
18 and connect to the internet by using Detective Bastos' hot  
19 spot, it will show one particular IP address.

20 By searching on a website called, "What is my IP  
21 address," you can determine the geographic location of that  
22 particular internet location. However, to use a DOJ phone, for  
23 example, if I connect to the internet using this phone, my  
24 communications are actually routed through the DOJ server in  
25 Washington. If you search the IP address for my particular

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1 phone, the geographic location that will come up for my IP  
2 address is actually in Washington, D.C.

3 THE COURT: So if you connect right now, if you  
4 connect through a hot spot, put aside the IP here in Manhattan,  
5 your IP address will show up as being located in Washington?

6 MS. FLETCHER: Yes.

7 THE COURT: Because you have --

8 MS. FLETCHER: On the Department of Justice phone, it  
9 routes through a non-New York IP address.

10 THE COURT: I understand.

11 MS. FLETCHER: What Mr. Paul and Mr. Mitchell have  
12 asked us to do is to stipulate that that IP address is located  
13 in New York. The government, to the extent they want to call a  
14 witness to testify to that fact, would like to cross-examine  
15 that witness to make clear, for example, that --

16 THE COURT: You have the right to cross-examine any  
17 witness, yes, I understand. You want to make clear, for  
18 example, what you said about your phone?

19 MS. FLETCHER: Yes.

20 MR. MITCHELL: The expert would testify what Ms.  
21 Fletcher is referring to is a proxy, and you have to take  
22 additional steps to create a proxy, and there are tests and  
23 diagnostics to be run to determine whether or not a proxy was  
24 used, and we expect this expert to testify that all of the  
25 tests that he had run indicate a proxy was, in fact, not used,



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1 meaning it was not rerouted.

2 THE COURT: I understand.

3 MS. FLETCHER: We would like to cross-examine their  
4 expert.

5 THE COURT: Bring him in.

6 MR. MITCHELL: We need to know whether or not we have  
7 authorization to bring in this expert because I have to go call  
8 him right now and get him on a plane.

9 THE COURT: Yes.

10 MR. MITCHELL: Thank your Honor.

11 MS. FLETCHER: The government has, apart from what  
12 Mr. Mitchell just informed us this morning --

13 THE COURT: Wait.

14 MS. FLETCHER: -- has not received any notice of their  
15 intention to call an expert. The government would -- this  
16 issue first became aware to the government when Ms. Thompson  
17 was cross-examined about the IP address on her particular  
18 document. I suspect this issue was known to Mr. Paul and  
19 Mr. Mitchell long before that. This is an untimely expert  
20 notice. The government is going to try to get our hands around  
21 whatever materials Mr. Mitchell and Mr. Paul can provide to us.

22 THE COURT: Are you providing materials?

23 MR. MITCHELL: Yes, your Honor.

24 THE COURT: Now?

25 MR. MITCHELL: Right now I can provide the CV of the

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1 expert and I can also explain, it is fairly clear, a summary of  
2 what his testimony will be based on what we are discussing now,  
3 and I will have the expert send everything over, everything he  
4 is basing his opinions on.

5 THE COURT: Right now, this morning?

6 MR. MITCHELL: I will tell him right now, this morning  
7 to send it.

8 MS. FLETCHER: Presumably this witness will testify  
9 tomorrow?

10 MR. PAUL: Yes. He is flying in tonight if your Honor  
11 authorizes it?

12 THE COURT: When Mr. Owimrin gets off, I would like to  
13 give the jury, which I assume will be today, I would like to  
14 give the jury Friday afternoon off. Let's get him in here  
15 right now. Bring the jury in.

16 (Jury present)

17 THE COURT: Please be seated in the courtroom.

18 All right, ladies and gentlemen, yesterday you saw the  
19 government rest. The issue now is whether Mr. Schmidt, on  
20 behalf of Mr. Owimrin, is going to put a defense case on. I  
21 told you the defense is under no obligation to prove anything  
22 because the burden is always on the government to prove its  
23 case beyond a reasonable doubt.

24 Mr. Schmidt, is there a defense case on behalf of  
25 Mr. Owimrin that you wish to present?

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Tureff - direct

1 MR. SCHMIDT: Yes, your Honor.

2 THE COURT: Call your first witness.

3 MR. SCHMIDT: The first witness is Samuel Tureff.

4 SAMUEL TUREFF,

5 called as a witness by the Defendant Owimrin,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SCHMIDT:

9 Q. Mr. Tureff, what do you do for a living?

10 A. I'm an independent paralegal consultant, typically within  
11 the Eastern and Southern District of New York.

12 Q. How old are you?

13 A. 28.

14 Q. What is your educational background?

15 A. I have a BA in psychology from Wesleyan University.

16 Q. How long have you been a paralegal?

17 A. Since I graduated college, about six and a half years.

18 Q. As a paralegal, what are your duties generally?

19 A. For the most part, I assist the attorney in the matter at  
20 hand. I review discovery evidence, whether it is phone  
21 records, medical records, bank records, financial records and  
22 put together review memos, I help assist in drafting legal  
23 memorandum for the court, visit with the clients, whether they  
24 be incarcerated at the various prisons around New York or at  
25 meetings such like that.

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1 Q. You're retained to be a paralegal --

2 THE COURT: Well, at prisons only if the defendant is  
3 incarcerated?

4 THE WITNESS: Of course, yes, or meetings.

5 THE COURT: Meetings outside?

6 THE WITNESS: Yes.

7 THE COURT: All right.

8 BY MR. SCHMIDT:

9 Q. Were you retained as a paralegal in this matter?

10 A. Retained by the defense?

11 Q. Yes.

12 A. No, I was not.

13 Q. How did you end up working for the defense in this case?

14 A. I was appointed as a paralegal expert pursuant to the CJA  
15 qualifications, appointed by the court.

16 Q. What does CJA mean?

17 A. The Criminal Justice Act.

18 Q. Does that mean that ultimately you're paid by the court?

19 A. Yes.

20 THE COURT: When you say "paralegal expert," that is a  
21 fancy way of saying you were appointed as a paralegal, right?

22 THE WITNESS: Yes. I was going for the terms in the  
23 materials I submit.

24 THE COURT: All right.

25 BY MR. SCHMIDT:

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Tureff - direct

1 Q. Now, in relation to your testimony here, what did you do?

2 A. I reviewed Mr. Owimrin's --

3 THE COURT: Ladies and gentlemen, just so you're  
4 aware, the Criminal Justice Act provides under certain  
5 circumstances federal funds from the Criminal Justice Act,  
6 provided from the Criminal Justice Act can be used to pay  
7 various attorneys and their assistants. That is what is  
8 happening here. Proceed.

9 BY MR. SCHMIDT:

10 Q. Did you examine any particular records for the purpose of  
11 testifying here today?

12 A. Yes, I did. We had reviewed Mr. Owimrin's cell phone  
13 records from January 2015 through March 2016, and those were  
14 primarily the records I reviewed. .

15 Q. I am going to show you what is marked as SP-1.

16 MR. SCHMIDT: May I approach.

17 Q. I want you to take a look at these records. What are those  
18 records?

19 A. These are the cell phone records I was looking through.  
20 They're for Mr. Owimrin's cell phone.

21 Q. What period of time do they cover?

22 A. They span from January 1st of 2015 to March 3rd of 2016.

23 Q. Now, were there any other -- did you have access to any  
24 other cell phone records beyond that period of time for  
25 Mr. Owimrin?

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1 A. No, I did not.

2 MR. SCHMIDT: I offer that in evidence as Defense  
3 Exhibit SP-1.

4 MS. FLETCHER: No objection, your Honor. I understand  
5 there is also a stipulation that covers these records.

6 THE COURT: No objection to the admission of SP-1.

7 (Defendant's Exhibit SP-1 received in evidence)

8 THE COURT: Ladies and gentlemen, I meant to point out  
9 to you simply that you may notice that Mr. Sobelman is no  
10 longer here. Now he is working on another case and you should  
11 draw no inference from the fact he is not here. We now know he  
12 is working on another case. Is there a stipulation?

13 MR. SCHMIDT: Yes, there is, your Honor.

14 (Off-the-record discussion)

15 MR. SCHMIDT: Your Honor, the stipulation reads:

16 It is hereby stipulated and agreed by and between  
17 Andrew Owimrin, by and through his attorney, Sam A. Schmidt and  
18 Abraham J. Abegaz-Hassen, Esquire, and United States of  
19 American by Geoffrey S. Berman, United States Attorney,  
20 Kiersten A. Fletcher, Benet J. Kearney and Robert Sobelman,  
21 United States Attorney's, and Shahram Ketabchi, by and through  
22 his attorneys, Kenneth A. Paul and David Mitchell, Esquire,  
23 that:

24 One, if called as a witness at trial, a custodian of  
25 records from Sprint would testify that Defense Exhibit SP-1,

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1 including all parts and subdivisions thereof, contains true and  
2 correct copies of records obtained from Sprint regarding the  
3 account opened and maintained at Sprint bearing telephone  
4 numbers 201-838-7774, and from January 1, 2015 through March 3,  
5 2016, the original records while made at or near the time by or  
6 from the information transmitted by a person with knowledge of  
7 the matters set forth in the records, that they were kept in  
8 the ordinary course of Sprint's regularly conducted business  
9 activity, that it was a regular practice of that business  
10 activity to make such records.

11 The custodian of records from Sprint would further  
12 testify that the Defense SP-1 only records of voice calls are  
13 included, records of text messages sent to or from 7774 are not  
14 included. The column date and "at" reflects the month and date  
15 on which the call was placed or received. The columns time and  
16 "at" reflect the time at which the calls were placed or  
17 received.

18 D. The columns phone number and to and from reflect  
19 the number of the party to the call that is not the 7774  
20 number. If the call is an outgoing call, to and from column  
21 reflects the number that received the call from the 7774  
22 number. If the call is an incoming call, the phone number the  
23 to and from column reflects the number placed the call to the  
24 7774 number. The columns destination and call destination  
25 reflect outgoing calls, the city and state associated with the

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1 number called by the 7774 number. The column minutes used and  
2 min, M I N, reflected duration of the call rounded up to the  
3 nearest minute.

4 It is further stipulated and agreed that this  
5 stipulation may be received in evidence at a trial of the  
6 above-referenced matter, dated November 1, and signed by the  
7 attorneys for all parties, and I offer that stipulation in  
8 evidence as SP-5.

9 THE COURT: SP-5 admitted.

10 MR. SCHMIDT: Excuse me, your Honor, SP-6.

11 THE COURT: SP-6 admitted without objection.

12 (Defendant's Exhibit SP-6 received in evidence)

13 THE COURT: Proceed. Next question.

14 BY MR. SCHMIDT:

15 Q. Now, in the examination of all of the telephone records in  
16 SP-1, what was the purpose of the examination of all of the  
17 telephone records in SP-1?

18 A. There were two purposes for which I examined the records.

19 The first was to review the phone numbers associated  
20 with sales that Mr. Owimrin made while at Olive Branch and to  
21 compare those telephone numbers to his records to see if there  
22 are any matches; and the second, I reviewed telephone records  
23 pertaining to his calls with a Brooke Marcus and Jane Thompson,  
24 I reviewed them, if there are any matches between his records  
25 and that phone number.



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1 Q. Do you know another name used by Brooke Marcus?

2 A. Yes, Emily Miller.

3 Q. Now, when you reviewed the records for the time that  
4 Mr. Owimrin was working at Olive Branch, did you review the  
5 whole period of time they worked there or only the period of  
6 time that the records that you had reflected?

7 A. Right, so we, the records we had reflect only part of his  
8 time at Olive Branch spanning from the beginning of January  
9 2015 when our phone records begin until the end of September  
10 2015 when he no longer worked there.

11 Q. How long did you obtain the telephone numbers of the people  
12 who Andrew Owimrin sold to?

13 A. There were a couple of places where I found these phone  
14 numbers. Primarily they were within the Google calendar  
15 documents that we received. Their phone numbers were  
16 associated, listed in with the calendar appointments. The  
17 remaining phone numbers that I could not find on the calendars  
18 I found primarily in the WEE lists that were also provided on  
19 the WEE lists or in discovery. I apologize.

20 Q. Did you search many other documents to assure yourself that  
21 you had at least a fair --

22 THE COURT: Sustained.

23 BY MR. SCHMIDT:

24 Q. Do you know whether you were able to locate all of the  
25 sales made by Mr. Owimrin during that period of time?

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1 A. No, I do not.

2 Q. Are you confident that you obtained a substantial or most  
3 of those calls --

4 MS. FLETCHER: Objection.

5 Q. -- of those sales?

6 THE COURT: Sustained.

7 BY MR. SCHMIDT:

8 Q. How did you actually physically obtain that information  
9 from the documents that you saw?

10 A. To compile Mr. Owimrin's sales, there were a couple of  
11 charts, sales charts within the discovery, primarily found on  
12 the Olive Branch marketing one at Gmail dot com account. They  
13 were Excel charts attached to emails.

14 There is a shared reporting chart. There was a  
15 Youngevity sales chart and I also found sales through coded  
16 sales forms as well as the calendar entries.

17 Q. Did you actually physically search through all of these  
18 documents or did you use any technology to help you?

19 A. I used the primarily the search and find function on Excel  
20 a lot of times as well as -- that is the main technology I used  
21 to help find and isolate his sales.

22 Q. The search technology for Excel would only find documents  
23 in Excel?

24 A. In that document that I pulled up, yes.

25 Q. What about other documents?

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1 A. I searched our database with that provided all the  
2 discovery evidence as well as the other discovery materials  
3 with a similar search and find function.

4 Q. Were you aware of what the database included?

5 MS. FLETCHER: Objection, your Honor.

6 MR. SCHMIDT: I'll rephrase the question.

7 BY MR. SCHMIDT:

8 Q. Do you know from what devices the data, in the database  
9 came from?

10 A. Yes, there were --

11 MS. FLETCHER: Objection, your Honor.

12 THE COURT: If he knows.

13 MS. FLETCHER: Your Honor, may we be heard at sidebar?

14 THE COURT: Yes.

15 (Continued on next page)

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1 (At sidebar)

2 THE COURT: The question is from what devices the  
3 database came.

4 MS. FLETCHER: Your Honor, my concern is that this  
5 line of questioning is going to make it appear to the jury  
6 there is a bunch of evidence they haven't seen. What I think  
7 Mr. Schmidt is doing is trying to establish he conducted a  
8 diligent search for phone numbers. The government won't  
9 challenge that. We ask he not create the impression there is a  
10 whole bunch of stuff the jury is not being shown.

11 MR. SCHMIDT: How about I use the word search through  
12 all the material received on this case from the government?

13 MS. FLETCHER: Sure.

14 THE COURT: Let's go.

15 (Continued on next page)

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Tureff - direct

1 (In open court)

2 BY MR. SCHMIDT:

3 Q. Mr. Tureff, would it be fair to say that your examination  
4 included all of the material and documents provided by the  
5 government in discovery?

6 A. Yes.

7 Q. Did you prepare a chart of the telephone numbers and names  
8 of the people that you found to be purchasers from Andrew  
9 Owimrin during the time-frame?

10 A. Yes, I did.

11 Q. I ask you to take a look at SP-5. There are how many pages  
12 in SP-5?

13 THE COURT: Purchases from Andrew Owimrin based on his  
14 phone records. Is that right?

15 THE WITNESS: Purchases, your Honor?

16 THE COURT: The sales. I am sorry. Sales of Andrew  
17 Owimrin based on his phone records, is that what we're talking  
18 about?

19 THE WITNESS: This is a comparison of Andrew Owimrin's  
20 phone records --

21 THE COURT: No. I am sorry. The question was --

22 MR. SCHMIDT: Let me back up a second, your Honor.

23 I'll make it clearer.

24 BY MR. SCHMIDT:

25 Q. After you found the names of the people that Andrew Owimrin

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1 sold to, how did you obtain the telephone numbers of those  
2 people?

3 MS. FLETCHER: Objection to foundation.

4 THE COURT: How did you find the names of the people  
5 that Andrew Owimrin sold to?

6 MS. FLETCHER: Your Honor, apologies, but objection to  
7 foundation on your Honor's question as well.

8 MR. SCHMIDT: That testimony is already in evidence.

9 THE COURT: Your objection to my question is  
10 overruled.

11 MS. FLETCHER: Expectedly, your Honor.

12 THE COURT: Let's go. Sir?

13 THE WITNESS: To answer your question, I reviewed  
14 sales documents within the discovery. There were a number of  
15 larger sales documents for certain time periods as well as  
16 weekly sales reports and as well calendar entries that I use.

17 THE COURT: That you just testified to?

18 THE WITNESS: Yes.

19 THE COURT: Proceed.

20 BY MR. SCHMIDT:

21 Q. How did you obtain the telephone numbers of the purchasers?

22 A. As I said, I mostly found those phone numbers within the  
23 calendar entries that related to this appointment for that  
24 sale. I also found the couple of phone numbers I couldn't find  
25 in the calendar entries were located on lead lists also in the

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1 discovery.

2 Q. Lead lists of the same names?

3 A. Yes, sorry, lead lists associated with that customer  
4 itself.

5 Q. Were you able to obtain the telephone numbers of everybody  
6 single person that you had on that list?

7 A. I believe I did, yes.

8 Q. When you prepared the document SP-5 that shows the  
9 telephone number, the name and the result of your review --

10 MS. FLETCHER: Objection to form.

11 THE COURT: Sustained.

12 BY MR. SCHMIDT:

13 Q. I am going to give you what is marked SP-5 so you  
14 physically have it in front of you. What did you do with the  
15 result of your searches?

16 A. I drafted a summary chart.

17 Q. What does the summary chart include?

18 A. The summary chart includes the date of the sale, the  
19 telephone number or on occasion plural numbers that I found  
20 associated with those customers as well as the result of  
21 comparing those telephone numbers to Mr. Owimrin's cell phone  
22 records.

23 Q. Now, did you also include a date relating to each of the  
24 sales?

25 A. Yes, the date of the sales, the first column on the left.

IB1JKET1

Tureff - direct

1 Q. How did you find or locate the date of the sales?

2 A. Those again were listed on service agreements on the  
3 calendar entries, and those were the two sources as well as,  
4 sorry, as well as the sales spreadsheets.

5 Q. Did SP-5 correctly and accurately reflect the result of  
6 your searches?

7 A. Yes, it does.

8 MR. SCHMIDT: I offer SP-5 into evidence.

9 MS. FLETCHER: May I have a moment, your Honor?

10 THE COURT: Yes.

11 (Off-the-record discussion).

12 MS. FLETCHER: No objection.

13 THE COURT: Admitted without objection, SP-5.

14 (Defendant's Exhibit SP-5 received in evidence)

15 MR. SCHMIDT: Would you publish SP-5.

16 THE COURT: Next question.

17 MR. SCHMIDT: Can we just publish it.

18 THE COURT: Next question.

19 BY MR. SCHMIDT:

20 Q. Now, were there any merchants of Mr. Owimrin having  
21 telephone contact with the names on the list on his cell phone?

22 A. Of the, I believe, 87 customers that matches I reviewed for  
23 the time period, I believe there was one customer, yes, where  
24 Mr. Owimrin had contact with on his telephone.

25 Q. Who was that customer?



IB1JKET1

Tureff - direct

1 A. Diane Weissenberger.

2 Q. The contact that Mr. Owimrin had with Ms. Weissenberger,  
3 did it match the date of the sale that he made while at Olive  
4 Branch?

5 MS. FLETCHER: Objection to foundation.

6 THE COURT: I will allow that.

7 MS. FLETCHER: Your Honor, it assumes facts not in  
8 evidence.

9 THE COURT: He has testified --

10 MR. SCHMIDT: It is in evidence.

11 THE COURT: -- he testified of his view of when he was  
12 at Olive Branch. You may answer. Restate the question so the  
13 witness has it.

14 MR. SCHMIDT: I forgot the question.

15 THE COURT: Did the contact that Mr. Owimrin had on  
16 his cell phone with Ms. Weissenberger reflected in your chart  
17 match the date of sale of DOS that he made while at Olive  
18 Branch?

19 THE WITNESS: No. The phone calls occurred after,  
20 after the sale.

21 THE COURT: The sales were in the contract.

22 What is the date of sale, when the contract was  
23 signed, if you know?

24 THE WITNESS: The date of sale I believe for Ms.  
25 Weissenberger was the date entered for the sale on the

IB1JKET1

Tureff - direct

1 Youngevity sales chart when the sale was completed.

2 THE COURT: One contact you found was on Owimrin's  
3 cell phone was after the sale?

4 THE WITNESS: Yes, it was.

5 THE COURT: Next.

6 THE WITNESS: Yes, your Honor, it did not match the  
7 sales.

8 BY MR. SCHMIDT:

9 Q. You indicated on the chart the actual date of the contact?

10 A. I did.

11 Q. Now, what was the purpose of -- now, did you make charts  
12 related to the second purpose of your examination?

13 A. Yes, I did.

14 Q. Where did you obtain the telephone number or telephone  
15 numbers of Brooke Marcus?

16 A. They were located within Jane Thompson's 3500 material, a  
17 screen-shot of her contact, of Emily Miller in her contacts and  
18 the two associated cell phones.

19 Q. You said Emily Miller.

20 Is that because you, in your review of the records,  
21 you believe Emily Miller and Brooke Marcus are one and the same  
22 people?

23 A. Yes. Emily Miller is the name Brooke Marcus used.

24 Q. Now, in the examination of -- was that time-frame more  
25 limited?

IB1JKET1

Tureff - direct

1 A. Yes.

2 Q. Than the --

3 THE COURT: The time-frame of that search?

4 THE WITNESS: I would have to see my chart to provide  
5 the specific dates, but I believe it ranged from the end of  
6 December 2015 through the beginning of March 2016.

7 BY MR. SCHMIDT:

8 Q. I am going to show you what is marked as SP-2.

9 Is that a chart that you made as a result of your  
10 search efforts?

11 A. Yes, SP-2 is the contact between Brooke Marcus' cell phone  
12 we have on your records and Mr. Owimrin's cell phone.

13 Q. Is there more than one cell phone that you were aware that  
14 Brooke Marcus had communications with?

15 A. Yes, I was aware of two cell phones.

16 Q. How did you do the searches to make a determination of the  
17 communications?

18 A. Again so in Andrew Owimrin's cell phone records I did a  
19 search and did find function for those two telephone numbers.

20 Q. Page 1 and Page 2 the result of you those searches?

21 A. SP-2 and SP-3, yes, those are the results of my searches  
22 with the two cell phone records associated with Brooke Marcus.

23 Q. What does the information of those documents -- what  
24 information is supplied in those documents?

25 A. It is the date of a cell phone record, date of a call

IB1JKET1

Tureff - direct

1 between Ms. Marcus and Mr. Owimrin, the time the call occurred,  
2 whether the call came in, meaning it went from Brooke Marcus to  
3 Andrew Owimrin or out from Mr. Owimrin to Ms. Marcus as well as  
4 the duration in minutes.

5 Q. When you say from and to Mr. Owimrin or Ms. Marcus, you  
6 mean from their telephones, not necessarily, you know, they  
7 actually had a conversation?

8 A. Correct, correct, to and from those associated phone  
9 numbers.

10 Q. SP-4 is a separate chart. What does that chart show?

11 A. SP-4 is a comparison between the phone records for  
12 Mr. Owimrin and Jane Thompson.

13 Q. When you say the "phone records," you mean all of the phone  
14 records that he made, all the phones he used or a particular  
15 phone?

16 A. The phone records that we have in discovery for  
17 Mr. Owimrin's cell phone ending in 7774.

18 Q. Did you have access to any other telephones that  
19 Mr. Owimrin did or did not use?

20 A. No. These are the records I had where did you get  
21 Ms. Thompson's telephone number, Ms. Thompson's telephone  
22 number again I found in her 3500 material.

23 Q. Did you locate more than one cell phone for Ms. Thompson?

24 A. I cannot say whether the other phone number was a cell  
25 phone. I did find another phone number associated with Ms.

IB1JKET1

Tureff - direct

1 Thompson in her notes.

2 Q. Did you do the same kind of search in these Sprint records  
3 for the numbers you had for Ms. Thompson?

4 A. I did.

5 Q. Does SP-4 accurately show the results of that search?

6 A. Yes, it does.

7 MR. SCHMIDT: I offer SP-2, 3 and 4 into evidence.

8 MS. FLETCHER: No objection.

9 THE COURT: Admitted.

10 (Defendant's Exhibits SP-2, SP-3 and SP-4 received in  
11 evidence)

12 MR. SCHMIDT: Would you show the jury.

13 (Pause)

14 BY MR. SCHMIDT:

15 Q. That one is of Brooke Marcus' phone ending in 3998. May we  
16 have the next one?

17 THE COURT: Speak into the Mike, please.

18 Q. May we have the next one, please. (Pause)

19 A. Jane Thompson's telephone number that there were calls and  
20 I guess there is one other page. (Pause) Mr. Owimrin and Ms.  
21 Marcus in phone number ending in 9446.

22 (Pause)

23 Q. Let's go back a second for the Diane Weissenberger.

24 What was the date that you found that she made the  
25 agreement to purchase products from Andrew Owimrin while he was

IB1JKET1

Tureff - cross

1 at Olive Branch?

2 A. The date I have is September 17th, 2015.

3 MR. SCHMIDT: I have no further questions.

4 THE COURT: Is there any cross-examination?

5 MS. FLETCHER: There is, your Honor.

6 THE COURT: Mr. Paul, do you have any questions?

7 MR. PAUL: I do not, your Honor. Thank you.

8 CROSS EXAMINATION

9 BY MS. FLETCHER:

10 Q. Good morning, Mr. Tureff.

11 A. Good morning.

12 Q. Ms. Lee, can we please pull up what is now in evidence as  
13 Defense Exhibit SP-5.

14 Mr. Tureff, you testified on direct that you only  
15 included on SP-5 the sales made while Mr. Owimrin was working  
16 for Olive Branch. Is that correct?

17 A. That is not entirely correct. The SP-5 is the sales that  
18 Mr. Owimrin made at Olive Branch that fit the time range that  
19 we have for his phone records.

20 Q. So you did not include any sales that Mr. Owimrin made  
21 after September 29th of 2015?

22 A. Correct.

23 Q. Why did you not include any sales after September 29, 2015?

24 A. Those were the records I was asked to review as pertaining  
25 his sales at Olive Branch.

IB1JKET1

Tureff - cross

1 THE COURT: In other words, you did what you were  
2 told, and you weren't told to add any sales for any other time  
3 period. Is that correct?

4 THE WITNESS: Yes, that was the task.

5 MS. FLETCHER: Ms. Lee, can you please go to the last  
6 page of SP-5 and blow up 9-17-15 entry for Diane Weissenberger.

7 BY MS. FLETCHER:

8 Q. Mr. Tureff, you said that, you testified on direct the sale  
9 you understood Mr. Owimrin made to Ms. Weissenberger was on  
10 September 17th of 2015. Is that correct?

11 A. I believe so. That was the date listed on the sales chart.

12 Q. When you looked at Mr. Owimrin's cell phone records, you  
13 didn't see any calls from his cell phone to Ms. Weissenberger  
14 on that date?

15 A. Correct.

16 Q. But you did see, it looks like, 9 calls that Mr. Owimrin  
17 made to Ms. Weissenberger on the dates listed in the right-hand  
18 column of your chart. Is that right?

19 A. There were 9 phone calls, I believe they included both  
20 ingoing and outgoing calls, so they were not necessarily 9  
21 calls made by Mr. Owimrin.

22 Q. 9 calls between Mr. Owimrin and Ms. Weissenberger on the  
23 dates reflected in the far-right column of your chart at SP-5?

24 A. Yes.

25 Q. Is that right?

IB1JKET1

Tureff - cross

1 A. Yes.

2 Q. One of those dates is October 7th of 2015?

3 A. Yes.

4 Q. Correct? Ms. Lee, can we please pull up what is in  
5 evidence as government exhibit -- I believe it is 503. Do you  
6 see that on your screen, Mr. Tureff?

7 A. I do.

8 Q. This is one of the appointments that you testified about,  
9 right, the appointments in Mr. Owimrin's calendar?

10 A. This is an appointment. I have no way of seeing whether  
11 this was in Mr. Owimrin's calendar or not.

12 Q. Fair enough.

13 Taking a look at Government Exhibit 503, do you see  
14 where it says upsell Diane Weissenberger?

15 A. I do.

16 Q. And the date of that appointment is September 25, 2015?

17 A. Yes.

18 Q. That appointment indicates Ms. Weissenberger had signed a  
19 COS?

20 A. I see that note, yes.

21 Q. And based on your review of the discovery in this case, you  
22 know a COS means a Continuation of Services Agreement?

23 A. Yes.

24 Q. Is that fair?

25 And individuals at Olive Branch, customers of Olive



IB1JKET1

Tureff - cross

1 Branch were asked to sign Continuation of Services Agreements  
2 when they had initiated charge-backs?

3 MR. SCHMIDT: Objection, your Honor.

4 THE COURT: Yes, sustained.

5 BY MS. FLETCHER:

6 Q. The date of this appointment is 9-25-2015?

7 A. Yes.

8 Q. Is that correct? Okay. Ms. Lee, can we please pull up  
9 what is in evidence as Government Exhibit 1103. If we can blow  
10 up just the top half of that.

11 Do you see that on your screen, Mr. Tureff?

12 A. I do.

13 Q. This is a Product and Services Agreement with Al Business  
14 Consultants?

15 A. Yes.

16 Q. And it is an agreement between Al Business Consultants and  
17 Diane Weissenberger?

18 A. Yes.

19 Q. Do you see that just to the right of where it says Diane  
20 Weissenberger, there are initials that say DW?

21 A. Yes.

22 Q. It says 10/7/15?

23 A. Yes.

24 Q. That is October 7th of 2015, correct?

25 A. Yes.

IB1JKET1

Tureff - cross

1 Q. If we please can go to the last page of that exhibit, I  
2 believe it is Page 3, this is the signature page of the Product  
3 and Services Agreement, correct?

4 A. Yes.

5 Q. Signed by Diane Weissenberger?

6 A. Yes.

7 Q. Dated October 7th, 2015?

8 A. Yes.

9 Q. And she authorizes two credit card charges on that day --

10 MR. SCHMIDT: I am objecting. This is far beyond the  
11 scope.

12 THE COURT: Sustained.

13 BY MS. FLETCHER:

14 Q. Is it fair to say Ms. Weissenberger made additional  
15 purchases on October 7th of 2015?

16 MR. SCHMIDT: Objection, your Honor.

17 THE COURT: Sustained.

18 BY MS. FLETCHER:

19 Q. Can you please go back to SP-5. The data of this in SP-5,  
20 Mr. Tureff, is culled from the 7774 phone records, right?

21 A. The date?

22 Q. The data?

23 A. The data? This chart is --

24 MR. SCHMIDT: Objection, your Honor.

25 THE COURT: No. I will allow that.

IB1JKET1

Tureff - cross

1 A. -- which section of data is pulled from -- I don't  
2 understand your question. I am sorry.

3 Q. The dates and the phone numbers -- let me make sure I  
4 understand exactly what you did.

5 A. Okay.

6 Q. Once you reviewed the appointment calendars and the sales  
7 sheets and got an idea of the sales made by Mr. Owimrin, do I  
8 understand that what you did was you looked for the phone  
9 numbers of those particular victims in --

10 MR. SCHMIDT: Objection.

11 Q. -- in Mr. Owimrin's phone records?

12 THE COURT: No. I will allow that.

13 A. Yes, I tried to match up the phone number to see whether  
14 the phone numbers for the customers of those sales appeared in  
15 Mr. Owimrin's cell phone records.

16 Q. And to be clear, you only reviewed his cell phone records?

17 You didn't review, for example, the landline records  
18 from Olive Branch?

19 A. Correct.

20 Q. You reviewed only voice records? You didn't review whether  
21 he had any text message communications with these customers?

22 A. I reviewed the records we were provided from Sprint.

23 THE COURT: Did you review the records of the cell  
24 phones of other employees?

25 THE WITNESS: No. I reviewed --

IB1JKET1

Tureff - cross

1 THE COURT: Next question. I am sorry. You reviewed  
2 7774?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: That's it?

5 THE WITNESS: Yes.

6 THE COURT: All right.

7 BY MS. FLETCHER:

8 Q. You didn't review any communications that Mr. Owimrin may  
9 have had on his cell phone after September 29th of 2015?

10 A. For this particular exhibit, no.

11 Q. Would you please please pull up Page 104 of what is now in  
12 evidence as Defense Exhibit SP-1.

13 A. What was that page?

14 THE COURT: She is just putting up an exhibit.

15 THE WITNESS: Okay.

16 Q. Mr. Tureff, I am hoping you'll be able to see Page 1 of 4  
17 on your screen.

18 A. (Pause) If we could blow it up.

19 Q. Ms. Lee, can you please blow up the bottom half of that,  
20 the calls on October 14th. Mr. Tureff, do you see that on your  
21 screen?

22 A. I do.

23 Q. Do you see the call on October 14th at 5:00 pm to an area  
24 code 352 in Wildwood, Florida?

25 MR. SCHMIDT: Your Honor, I object. This is beyond

IB1JKET1

Tureff - cross

1 the scope of this witness' testimony. The testimony was the  
2 telephone calls while Mr. Owimrin was at Olive Branch, period.

3 THE COURT: Overruled.

4 A. I see that entry.

5 BY MS. FLETCHER:

6 Q. Do you see the area code 352?

7 A. I do.

8 Q. That is Charlene Foster's phone number, isn't it?

9 A. I don't know that answer.

10 Q. Take a look at the next page. Page 105, the very bottom of  
11 the page, October 16th, several calls on October 16th.

12 Do you see the third one from the bottom, area code  
13 352 in Wildwood, Florida?

14 A. I see that entry.

15 Q. Those are Charlene Foster's phone records?

16 MR. SCHMIDT: Objection again.

17 THE COURT: I don't know that he would know that.

18 Do you know that?

19 THE WITNESS: I don't know who that phone number is  
20 associated with.

21 BY MS. FLETCHER:

22 Q. So in preparing Government Exhibit SP-5, you looked at  
23 sales --

24 THE COURT: No, no. Defense exhibit.

25 MS. FLETCHER: Sorry, your Honor.

IB1JKET1

Tureff - cross

1 Q. Defense Exhibit SP-5, in preparing Defense Exhibit SP-5,  
2 you looked at sales sheets from Olive Branch Marketing?

3 A. I did.

4 Q. Is that right?

5 A. Yes.

6 Q. In those sales sheets, you didn't see Charlene Foster's  
7 phone number?

8 A. No, I don't believe so. I wasn't attempting to find it.

9 It wasn't one of the sales -- wasn't one of the customers for  
10 most of the sales I found I was searching, attempting to locate  
11 the telephone.

12 Q. Ms. Lee, please pull up Page 120 of that same exhibit, the  
13 calls on November 12th.

14 Now, we'll look at the exhibits you created with  
15 respect to the calls of Brooke Marcus. You were asked to  
16 collect phone calls between Andrew Owimrin and Brooke Marcus on  
17 Andrew Owimrin's cell phone. Isn't that right?

18 A. Yes.

19 Q. Take a look at the entry three lines from the bottom on  
20 government exhibit -- sorry -- Defense Exhibit SP-1, Page 120,  
21 do you see that entry there, 3:57 pm on November 12th?

22 A. I do.

23 Q. And that phone number beginning in 949?

24 A. Yes.

25 Q. That is Shahram Ketabchi's phone number?

IB1JKET1

Tureff - cross

1 A. I don't know that.

2 Q. You weren't looking to collect phone calls from Shahram  
3 Ketabchi and Andrew Owimrin for the purposes of preparing your  
4 exhibit?

5 A. I was not. That was not the scope of the search.

6 Q. Can we please pull up what is now in evidence as Government  
7 Exhibit 165, Page 8.

8 MR. SCHMIDT: Your Honor, again this is beyond the  
9 scope.

10 THE COURT: I think so, but I want to hear a question.  
11 I shouldn't say, "I think so." I want to hear a question.

12 BY MS. FLETCHER:

13 Q. Can you see that on your screen, Mr. Tureff?

14 A. I see that entry, yes.

15 Q. This is Jane Thompson's notebook, right?

16 THE COURT: Do you know that, sir?

17 THE WITNESS: I believe so, yes.

18 THE COURT: Fine.

19 BY MS. FLETCHER:

20 Q. You testified on direct that you reviewed certain entries  
21 in Jane Thompson's notebook for the purposes of conducting your  
22 analysis?

23 A. I found her cell phone records, I found her cell phone  
24 number amongst the 3500 material.

25 Q. That included review of Government Exhibit 165, Jane

IB1JKET1

Tureff - cross

1 Thompson's notebook?

2 A. I didn't particularly look through Government Exhibit 165  
3 closely. I found her cell phone number in her 3500 material.

4 Q. Taking a look at that particular page, do you see the two  
5 phone numbers?

6 A. I do.

7 Q. What is the first phone number there listed next to the  
8 name Jonathan Stewart?

9 A. Do you want me to read you the telephone number?

10 201-448-9788.

11 Q. Are you familiar with that phone number?

12 A. Not particularly.

13 Q. You didn't include any calls to or from that phone number  
14 in conducting your analysis of what calls there were between  
15 Andrew Owimrin and Jane Thompson. Is that right?

16 A. I compared Ms. Thompson's phone number which I found in the  
17 materials to Andrew Owimrin's cell phone, 7774 number for which  
18 we have records.

19 Q. So your summary charts would not reflect, for example,  
20 calls between Ms. Thompson and this phone number, 201-448-9788?

21 A. I do not have the records for either of those phone  
22 numbers.

23 THE COURT: The answer to the question is that's  
24 correct, your search did not include those?

25 THE WITNESS: Correct, I did not search for trying to



IB1JKET1

Tureff - cross

1 find a link between those two phone numbers because I don't  
2 have the records to do so.

3 BY MS. FLETCHER:

4 Q. If we can pull up what is now in evidence as Defense  
5 Exhibit SP-2 and SP-3. If we can put those side-by-side, Ms.  
6 Lee. Do you have those documents in front of you, Mr. Tureff?

7 A. I do.

8 Q. SP-2 and SP-3?

9 A. Yes.

10 Q. The date range on those two documents combined is December  
11 28, 2015 through March 1st of 2016. Is that right?

12 A. Yes.

13 Q. I understand you don't have records after March 1st of  
14 2016. Were there any phone calls between Brooke Marcus and  
15 Andrew Owimrin's cell phone before December 28th of 2015?

16 A. I did not find any between that cell phone for Ms. Marcus,  
17 either cell phone for Ms. Marcus and the 7774 number in the  
18 rest of 2015 that was included in Mr. Owimrin's cell phone  
19 records.

20 Q. How about text messages?

21 A. I believe those records that I have only include voice  
22 calls.

23 Q. How about phone calls between one of Brooke Marcus' two  
24 cell phones and any other number used by Andrew Owimrin?

25 A. Again the records that we have are for Andrew Owimrin's

IB1JKET1

Tureff - cross

1 cell phone, the number ending in 7774.

2 Q. Can we pull up what is now in evidence as Defense Exhibit  
3 SP-4.

4 (Continued on next page)

IB18KET2

Tureff - Cross

1 Q. Do you see that up on the screen?

2 A. I do.

3 Q. These are the calls, you testified on direct, between Mr.  
4 Owimrin's 7774 number and the phone number that you had for  
5 Ms. Jane Thompson, is that right?

6 A. For one of the two phone numbers I had for Ms. Thompson,  
7 yes.

8 Q. You testified that the other Jane Thompson phone number did  
9 not have any calls with this cell phone number, right?

10 A. To Mr. Owimrin's cell phone number, correct.

11 Q. Understood.

12 Now, this chart doesn't include any calls that Ms.  
13 Thompson may have had with Mr. Owimrin on any other phone  
14 number, is that correct?

15 A. This chart includes the records for Mr. Owimrin at 7774 and  
16 Ms. Thompson at 2059, the number I found.

17 THE COURT: I gather, although I don't want to put  
18 words in your mouth, the answer to Ms. Fletcher's question is  
19 yes.

20 MR. SCHMIDT: Your Honor, the exhibit actually speaks  
21 for itself. The question is somewhat redundant.

22 THE COURT: Can you answer my question or have you  
23 lost --

24 THE WITNESS: Can she repeat the question?

25 THE COURT: Sure.

IB18KET2

Tureff - Cross

1 Q. I have lost the thread of it.

2 I think what I asked, Mr. Tureff, is this exhibit  
3 doesn't include any phone calls that Ms. Thompson may have made  
4 to any other phone number that Andrew Owimrin used, including  
5 the one in her notebook?

6 A. Correct.

7 Q. It doesn't include text messages?

8 A. Yes.

9 Q. If Jane Thompson --

10 A. Correct.

11 THE COURT: None of the records you have looked at  
12 included texts?

13 THE WITNESS: Correct. The cell phone records I have  
14 for Mr. Owimrin only includes calls.

15 MR. SCHMIDT: Your Honor, that is indicated in the  
16 stipulation as well.

17 THE COURT: Thank you.

18 Next question.

19 Q. Mr. Tureff, if Andrew Owimrin was on the phone with Brooke  
20 Marcus and she patched in Jane Thompson, she meaning Brooke  
21 Marcus initiated a three-way call to include Jane Thompson in  
22 the call, that wouldn't be reflected on Andrew Owimrin's phone  
23 records, would it?

24 A. I cannot say yes or no to that. I don't know that answer.

25 Q. Did you see any indication on Andrew Owimrin's phone

IB18KET2

Tureff - Cross

1 records that he was participating in three-way calls with Jane  
2 Thompson?

3 A. I don't believe there was a designation for a three-way  
4 call in the records.

5 THE COURT: Based on the records and that's all you  
6 have to go on.

7 THE WITNESS: I have no way of knowing. As far as I'm  
8 aware, I have no way of knowing.

9 Q. Similar question. If Jane Thompson was on the phone with  
10 Brooke Marcus and Brooke Marcus used one of her two cell phones  
11 to patch in Andrew Owimrin on his cell phone, that wouldn't be  
12 reflected on Andrew Owimrin's records as a call between Andrew  
13 Owimrin and Jane Thompson, would it?

14 A. I don't know the answer to that.

15 Q. Wouldn't it be reflected as a call between Brooke Marcus  
16 and Andrew Owimrin if Ms. Marcus is the one who patched in Mr.  
17 Owimrin to speak to Jane Thompson?

18 MR. SCHMIDT: Objection.

19 THE COURT: Sustained. He is not a telephone expert.  
20 He is a paralegal.

21 MS. FLETCHER: May I have a moment, your Honor?

22 THE COURT: He did what he was told, and didn't do  
23 what he wasn't told.

24 MS. FLETCHER: No further questions, your Honor.

25 THE COURT: Anything?

IB18KET2

Tureff - Redirect

1 MR. SCHMIDT: Very briefly.

2 REDIRECT EXAMINATION

3 BY MR. SCHMIDT:

4 Q. Mr. Tureff, did you have access working this case to every  
5 bit of discovery that was received by the defense from the  
6 government?

7 A. I believe so.

8 Q. Was your search -- withdrawn.

9 Now, do you recall the testimony of Mr. Sinclair that  
10 salespeople may have used cell phones to make sales calls?

11 MS. FLETCHER: Objection. Beyond the scope of cross.

12 MR. SCHMIDT: It certainly explains --

13 MS. FLETCHER: And direct.

14 THE COURT: Just a moment.

15 MS. FLETCHER: Also 801.

16 MR. SCHMIDT: Your Honor, if you want me to lay a  
17 better foundation I can.

18 THE COURT: It does seem to be beyond the scope, sir.  
19 Ask another question.

20 BY MR. SCHMIDT:

21 Q. You answered all of the questions that the government asked  
22 limiting the time frame of the calls up to the point that he  
23 left Olive Branch Marketing, is that right?

24 MS. FLETCHER: Objection to form.

25 THE COURT: Up to the date he was given.

IB18KET2

Tureff - Redirect

1           You searched the phone records within the dates you  
2           were provided, correct?

3           THE WITNESS: The date range, yes, was up until Mr.  
4           Owimrin left Olive Branch Marketing.

5           Q. The dates that you had was from the beginning of the date  
6           that you had telephone records to the date that was relevant to  
7           when Mr. Owimrin left Olive Branch Marketing, is that correct?

8           MS. FLETCHER: Objection to form.

9           THE COURT: I will allow it.

10          A. Yes. That's the date range for the records in SP5 for the  
11          review.

12          Q. Do you recall Mr. Sinclair's testimony as to the use of  
13          cell phones by salespeople?

14          MS. FLETCHER: Objection. Scope. 801.

15          THE COURT: Sustained. Beyond the scope.

16          Q. Do you know what the purpose of your limited search was in  
17          relation to cell phone calls with customers?

18          THE COURT: Sustained. Just rephrase it.

19          I didn't understand it. That's why I am asking.

20          Q. Did you understand the purpose, the limited purpose of your  
21          examination of the records limiting it to that time frame?

22          A. Yes, I did.

23          Q. What was that purpose?

24          MS. FLETCHER: Objection. 801.

25          THE COURT: Sustained.

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Owimrin - Direct

1 MR. SCHMIDT: May we approach, your Honor?

2 THE COURT: Not on this. Let's close it.

3 801 is the appropriate objection. Proceed.

4 MR. SCHMIDT: I have no further questions.

5 THE COURT: All right. You may step down, sir.

6 (Witness excused)

7 THE COURT: Next witness for the defense.

8 MR. SCHMIDT: The defense calls the defendant, Mr.

9 Owimrin.

10 THE COURT: Mr. Owimrin, please step up.

11 ANDREW OWIMRIN,

12 called as a witness by the defendant,

13 having been duly sworn, testified as follows:

14 THE DEPUTY CLERK: State your full name and spell your  
15 last name for the record.

16 THE WITNESS: Andrew Owimrin, last name is  
17 O-W-I-M-R-I-N.

18 THE COURT: Good morning, sir. Welcome.

19 Please be seated. You know the drill by now. Keep  
20 the microphone close to your mouth.

21 DIRECT EXAMINATION

22 BY MR. SCHMIDT:

23 Q. Before you get to the beginning, I have a few questions.

24 Did you ever use your cell phone when you worked in  
25 Olive Branch to make a sale?



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1 A. Maybe once or twice.

2 Q. Now, was it for a nefarious purpose using your cell phone  
3 once or twice to make a sale?

4 MS. KEARNEY: Objection.

5 THE COURT: Sustained as to form.

6 Q. Did you use your cell phone when you left Olive Branch and  
7 moved with Mr. Ketabchi to A1 in the beginning?

8 MS. KEARNEY: Objection. Form.

9 THE COURT: I will allow it.

10 A. Yes.

11 Q. Why?

12 A. We were in the processing of starting A1. We didn't have a  
13 phone system. We were just getting started. We were moving  
14 from Olive Branch to work for Arash.

15 Q. Once you had -- withdrawn.

16 Now, Andrew, where did you grow up?

17 A. I grew in Hillsdale, New Jersey, Bergen County.

18 Q. Who did you grow up with?

19 A. I grew up with my family, my brothers.

20 Q. How many brothers do you have?

21 A. Three brothers.

22 Q. What are the ages of your brothers?

23 A. The one closest in age to me is 35 -- excuse me, 34, he  
24 will be 35 in January. The next one is 36 and 39.

25 THE COURT: How old are you, sir?

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1 THE WITNESS: I just turned 29.

2 Q. Were you raised with your parents?

3 A. Yes.

4 Q. Now, are your parents from the United States?

5 A. No, they are not.

6 Q. Where are your parents from?

7 A. My father was born in Jordan, raised in Lebanon, Beirut,  
8 and my mother was born in Greece.

9 Q. Do you know if your father reads and writes English?

10 A. He does not; he does not read and write English.

11 Q. Now, when you were growing up, what kind of work was your  
12 father doing?

13 A. Flooring, primarily flooring work.

14 Q. Now, what high school did you go to?

15 A. I went to Pascack Valley High School.

16 Q. Did you graduate from Pascack Valley?

17 A. I did not.

18 Q. When did you leave Pascack Valley High School?

19 A. When I was 15 years old, 10th grade.

20 Q. Why did you leave high school?

21 A. I had dropped out to help my father with the family  
22 business.

23 Q. Had you worked with your father before that?

24 A. I did, pretty much my entire childhood I would help.

25 Q. Did there come a time that you stopped working for your

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1 father?

2 A. I did.

3 Q. How long did you work for your father, about?

4 A. About, I would say about five, six years -- five, six years  
5 after I had dropped out, worked full time.

6 Q. Why you stop working for your father?

7 A. Health reasons. My father's health was deteriorating and  
8 the business just kind of slowed down and stopped.

9 Q. What kind of work did you do after that?

10 A. I have done everything. Construction, landscaping,  
11 maintenance work, handyman work, busboy, barback, which is  
12 basically a busboy for a bartender, pizza delivery.

13 Q. What was your last job that you had before you went to work  
14 at Olive Branch?

15 A. I was a busboy at a restaurant and they had promoted me to  
16 a barback.

17 Q. Andrew, are you nervous?

18 A. Yes, I am.

19 Q. I notice that you smile a lot when you're answering your  
20 questions.

21 A. Yes.

22 Q. Why is that?

23 A. When I get nervous I tend to smile or laugh or chuckle, but  
24 I do smile when I get nervous.

25 THE COURT: I hope you also smile when you're enjoying

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1 something.

2 THE WITNESS: I do, but I believe they are different  
3 smiles. You know when I'm nervous or when I am happy.

4 Q. Now, while you were working at that last job as a back  
5 busboy?

6 A. A busboy.

7 THE COURT: A barback. A barback supplies the  
8 bartender with clean glasses, takes dirty glasses away, sets  
9 up, helps out the bartender?

10 THE WITNESS: Yes, your Honor.

11 Q. While you were doing that, did you apply for another job?

12 A. Yes. Our neighbor that -- when we were living in Cliffside  
13 Park, our neighbor was the mayor's of Cliffside Park brother,  
14 and he wanted to offer me the opportunity to apply for the  
15 Cliffside Park police department, so I did.

16 Q. What process did you go through?

17 A. I went in for an -- I went in for two interviews, and then  
18 I would have to wait for the police academy, which I believe  
19 was every six months or every three months. I'm not sure  
20 exactly how long.

21 Q. Did you have an idea about how long you were going to have  
22 to wait until you could start the academy?

23 A. I would say six months.

24 Q. Now --

25 A. Before I had the academy interview. I wouldn't have just

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1 started. I would have to go through a test.

2 Q. Your brothers, are they all employed?

3 A. Yes.

4 Q. What do they do?

5 A. My oldest brother Alex is a stagehand here in New York  
6 City, in Manhattan. My brother Rich works for PSEG. And my  
7 brother Steve works as pretty much a coach; he runs a company  
8 in South Jersey doing sports, coaching, training, private  
9 parties.

10 Q. While you were bar busing and waiting to be interviewed or  
11 take a test at the academy, did there come a time that you were  
12 offered an opportunity to apply for another job?

13 A. Yes.

14 Q. What was that?

15 A. My cousin Reagan told me he was working for this company  
16 with his sister's boyfriend at the time, it's a good  
17 opportunity, it could be something that we could do as a  
18 career, you know.

19 Q. What were you told to do?

20 A. I was told to come in for an interview.

21 Q. Had you known your cousin's -- had you met your cousin's  
22 boyfriend before that time?

23 A. I did not meet my cousin's boyfriend before.

24 Q. Who is your cousin's boyfriend?

25 A. Arash Ketabchi.

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1 Q. Now, did you go to that office?

2 A. Yes.

3 Q. What happened when you got to the office?

4 A. Well, I went there in a suit and tie. I met my cousin  
5 Reagan in the hallway. He had called Arash Ketabchi out into  
6 the hallway, that was the first time I met Arash Ketabchi.  
7 Then we introduced ourselves there in the hallway. He walked  
8 me in the office, led me to Bill Sinclair's office where Bill  
9 conducted the interview.

10 THE COURT: When was this?

11 THE WITNESS: This was, I believe, in March or April  
12 of 2014.

13 Q. Now, you have heard testimony about different offices for  
14 Olive Branch. Do you remember what town that this office was  
15 located in?

16 A. Yes. It was in Hoboken.

17 Q. Now, you saw a photograph that Mr. Sinclair described the  
18 rooms and everything. Was it at that office or another office?

19 A. That was another office.

20 Q. Could you tell us about what the interview consisted of?

21 A. It consisted of Bill Sinclair giving me the details about  
22 what the job entailed, that it was a telemarketing sales job.  
23 But he kind of described it as a business development type job.  
24 He told me that --

25 MS. KEARNEY: Objection.

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1 MR. SCHMIDT: This is for background and his state of  
2 mind.

3 THE COURT: Just a moment.

4 Sustained.

5 MR. SCHMIDT: Your Honor, may we approach?

6 THE COURT: Yes.

7 (Continued on next page)

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1 (At the sidebar)

2 THE COURT: I understand it's just background, but I  
3 would like you to get to the core of what this is about.

4 MR. SCHMIDT: The government has asked for a conscious  
5 avoidance charge. They are going to say in some way or the  
6 other that he made improper statements, and he had the  
7 knowledge of these things, and ultimately -- or at least that  
8 he was aware of all the things going on, and therefore he knew  
9 this was a whole scam.

10 The only way for him to defend himself is for him to  
11 be able to testify what occurred that caused his state of mind  
12 to believe that this was a legitimate business that he was  
13 doing. If he can't do that, he can't defend himself.

14 So whether Bill Sinclair told him the truth or not is  
15 not relevant. What is relevant is what he heard from Bill  
16 Sinclair, what he heard from other people, what he thought  
17 about that, how it impacted his knowledge and intent.

18 MS. KEARNEY: Perhaps the more appropriate question  
19 is, What is your understanding of what the business would be  
20 based on what Bill told you?

21 THE COURT: I think that's the same thing.

22 Go ahead. Do it. I just don't want a whole lot of  
23 hearsay coming in here because it's not an adverse party.

24 MS. KEARNEY: I will add, your Honor --

25 MR. SCHMIDT: I need to develop why he trusted Bill



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1 Sinclair and why he continued to work there. If I can't bring  
2 out what Bill Sinclair was saying to him to impact his state of  
3 mind, then we can't do it, we can't present our defense.

4 THE COURT: There is something called hearsay.

5 MR. SCHMIDT: There is hearsay when it's coming out  
6 for the truth, not for impacting his state of mind. If you  
7 like, you could give a charge that it's not being offered for  
8 the truth of anything that Bill Sinclair has ever said. I am  
9 perfectly happy with that. It's not what he said. It's for  
10 the effect on his state of mind.

11 THE COURT: All right.

12 MS. KEARNEY: I understand that, your Honor, but Mr.  
13 Schmidt's question was what did he say to you. There is no  
14 indication of what the topic is going to be. So at that point  
15 I have to object because --

16 MR. SCHMIDT: I will be perfectly happy to lead him.

17 MS. KEARNEY: I think you can cabin your question on  
18 the topic or instructions.

19 MR. SCHMIDT: I can do this.

20 THE COURT: Do that, but again, state of mind only  
21 goes so far.

22 MR. SCHMIDT: In this case it's the only way, Judge.

23 THE COURT: What I mean is in terms of your running  
24 with lots and lots and lots of questions that you want an  
25 exception for state of mind. Make it succinct. Make it a few

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1 questions. Let's move on. And I will give that limiting  
2 instruction. I am giving you some leeway here.

3 (Continued on next page)

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1 (In open court)

2 THE COURT: Rephrase.

3 BY MR. SCHMIDT:

4 Q. What was the tone of the interview?

5 A. It was professional, enthusiastic, the best way I can  
6 describe how Bill was.

7 Q. Was it done in a way to try to persuade you to come to  
8 work?

9 MS. KEARNEY: Objection.

10 THE COURT: Sustained as to leading.

11 Q. Had you ever worked in a telephone marketing company?

12 A. Never.

13 Q. Other than perhaps receiving some telephone calls, did you  
14 have any idea what how a telephone marketing company worked?

15 A. No.

16 Q. In your interview with Mr. Sinclair, was he just seeking  
17 information from you about your background or was he giving you  
18 information about the business?

19 A. It was more of him explaining to me what the business was.

20 Q. You said he was professional and -- what was the word you  
21 used?

22 A. Enthusiastic.

23 Q. Enthusiastic, what do you mean by that?

24 A. It's just the way -- his demeanor, the way he carried  
25 himself, the way he dressed, the way he described everything.

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1 He seemed to know what he was talking about and seemed to want  
2 me to be there, or at least try.

3 THE COURT: You think he was selling you on the job?

4 THE WITNESS: Looking back on it, yes, sir.

5 MR. SCHMIDT: Thank you, your Honor.

6 Q. Was he successful --

7 A. Yes.

8 Q. -- in selling you the job?

9 Did he talk to you at all about what this job can mean  
10 to you as an occupation, as earnings, did he talk to you about  
11 that?

12 MS. KEARNEY: Objection.

13 THE COURT: Sustained as to form.

14 Did you try to sell him on yourself?

15 THE WITNESS: No. I let him know that I'm completely  
16 new to this. I had no idea what it was, but I was willing to  
17 learn. Because of the fact that he explained it was a career,  
18 it could be a career, they were just starting, they were going  
19 to be growing, they were going to be getting 401-k, health  
20 benefits, he led me to believe this was something that I could  
21 do for the rest of my life if I succeeded at it.

22 Q. Did he inform you about the earning potential?

23 A. Yes, he did.

24 Q. What did he tell you?

25 A. He said, if I'm not making \$80,000 a year just to start,

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1 then there is no reason for me to be working there; he wouldn't  
2 want me working there.

3 Q. How did that make you feel?

4 A. Nervous but excited.

5 Q. Did he talk at all about the kind of products that you were  
6 going to be selling?

7 A. Yes. He briefly did talk about everything. He gave me a  
8 pamphlet that described what these products that we would be  
9 selling were, as well as brief descriptions of them, almost  
10 like a script. If it had an LLC, it would tell you what the  
11 LLC was about and you could read that off to a customer.

12 Q. Did you have any understanding of the products they were  
13 selling prior to taking a look at the documents that he gave  
14 you?

15 A. No, not at all.

16 Q. Were you offered a job?

17 A. Yes, I was offered an opportunity.

18 Q. When did you start work?

19 A. March or April of 2014. I started the next -- literally  
20 that day, actually, not the next day, that day I started  
21 listening to people in the office.

22 Q. So what did you do -- withdrawn.

23 Was there a formal training there?

24 A. I wouldn't call it formal, but there was a training.

25 Q. What did you do initially for the first couple of weeks?

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1 A. I started off listening to appointments being set, and then  
2 I had started getting on the phones to set appointments and  
3 just get comfortable talking to people on the phone.

4 Q. Now, did you receive any training about how to set  
5 appointments?

6 A. Yes.

7 Q. Who trained you to do that?

8 A. Bill had pretty much trained me, but also he wanted me to  
9 listen to other people setting appointments, everybody in the  
10 office, nobody specific. But Bill taught me, Arash taught me a  
11 few things, everybody really did. But primarily Bill because  
12 everybody else was working so he was the only one who had time  
13 to explain things to me.

14 Q. Now, when you set appointments, how did you reflect the  
15 appointments so people knew that there were going to be  
16 appointments?

17 A. I would set the appointment, and then in the description on  
18 the calendar I would put set by Andrew.

19 Q. You said a calendar. What kind of a calendar was it?

20 A. It was a Gmail Google calendar.

21 Q. Had you worked a Gmail Google calendar before then?

22 A. Never.

23 Q. Who trained you to work a Gmail Google calendar?

24 A. Bill and coworkers.

25 Q. What was your understanding, once you put an appointment on

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1 the Gmail Google calendar, who would be able to see it?

2 A. Everybody would be able to see it. Everybody that had a  
3 name on the calendar, everybody that had access to the  
4 calendar, which is basically everybody in the office. Not  
5 basically, it was everybody in the office.

6 Q. Now, when you were doing the appointment setting, did you  
7 talk to the people you were setting appointments with about the  
8 products that the company had?

9 A. No.

10 Q. Who was the person who talked about that?

11 A. The sales rep.

12 Q. Now, do you recall the first time that you made a sales  
13 call?

14 A. Yes.

15 Q. Could you tell us about it?

16 A. Arash had -- I was setting appointments that day, and he  
17 just randomly stood me up and said, you're going to take this  
18 appointment, made me call it in front of the entire office. It  
19 was the only appointment; he made me do it in front of  
20 everybody. It didn't go so well.

21 Q. What do you mean by it didn't go so well?

22 A. I couldn't really get my words out. It got really hot in  
23 there, and I kind of just crumbled, ended up hanging on the  
24 client without even saying anything at all.

25 THE COURT: When was this?

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1 THE WITNESS: March or April. It was after two weeks,  
2 because I did appointments for about two weeks, so it had to be  
3 after about two weeks of me working there.

4 Q. Now, when you were making the sales call, did you have a  
5 script to follow?

6 A. I did have a script that I should have followed but I  
7 didn't.

8 Q. What happened?

9 A. I just got nervous. I just froze.

10 Q. Now, eventually you made -- would it be fair to say you  
11 made more and more sales calls?

12 A. Yes.

13 Q. Do you recall about how long it was before you were first  
14 successful?

15 A. Almost a month or two months -- it was actually almost two  
16 months into it, because the first month I was pretty much  
17 training, and then the second month I was actually trying to  
18 make sales calls, and it took me about two and a half, three  
19 weeks to get a sale.

20 Q. Now, when you started making these telephone calls, did you  
21 receive -- you said you received a script, is that right?

22 A. I did.

23 Q. Now, I am going to show you Government Exhibit 254.

24 MR. SCHMIDT: Can we put that up?

25 Q. You had a chance to previously read this?



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1 A. Yes.

2 Q. This document, right?

3 A. Yes.

4 Q. Is this a document -- is this one that you actually have  
5 seen before?

6 A. This exact one I did not see when I was still working at  
7 Olive Branch.

8 Q. Did you see something that was very similar to this script?

9 A. The words Tax Club were just replaced with Olive Branch,  
10 but it was pretty much the exact same contract, other than the  
11 business name, and there were a little tweaks here and there.

12 Q. Is it fair to say this is similar to one of the scripts  
13 that you worked off of?

14 A. It's fair, yes.

15 THE COURT: It sounds like -- go ahead.

16 Next question.

17 Q. Now, when there were other products to sell, did you  
18 receive either a script or information that you would use in  
19 describing those products?

20 A. Yes.

21 Q. Now, besides this script, did anyone there inform you that  
22 when you're making these sales there's some things you can do  
23 and some things you can't do?

24 MS. KEARNEY: Objection.

25 THE COURT: Rephrase it.

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1 Q. Besides just given the script, were you given other  
2 instructions by senior people?

3 A. Yes.

4 Q. Who were the people who gave you instructions?

5 A. The ownership, Bill Sinclair, Michael Finocchiaro, Arash.

6 Q. Was some of the instructions -- were you told -- what were  
7 some of the instructions that you were given?

8 A. There was just certain things that we could not say on the  
9 phone, earnings claims specifically was a big one that I could  
10 remember, tax -- I can't recall the exact word right now, but  
11 pretty much no earnings claims and no leading people to believe  
12 that they have to take these products. We are offering them,  
13 but they don't have to do it. You can't force somebody to do  
14 it.

15 Q. Now, other than Youngevity, which we will discuss later on,  
16 do you recall the products --

17 THE COURT: I'm sorry. Before you do that, I am not  
18 sure I quite understand what you just said.

19 You said you could not lead people to believe that  
20 they had to take the products you were offering. Is that  
21 right?

22 THE WITNESS: Yes.

23 THE COURT: What did you mean? That you could not  
24 tell them they were under a legal obligation to take the  
25 products, or rather it's not a must-have item?

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1 THE WITNESS: That first part was not specifically  
2 told to us. But yes, we couldn't lead them to believe that in  
3 order to be successful you need to take our products. They  
4 could go to anybody they want. They could go to any company  
5 they want to get whatever services they want.

6 THE COURT: I take it you didn't say that though,  
7 right?

8 THE WITNESS: Occasionally you could say that. If  
9 people said, are you the company we invested with previously,  
10 we would say, no, we are not; we are a separate company. We  
11 couldn't act as we were the company that had initially spoke to  
12 these clients. If Elite called, we couldn't say I am calling  
13 from Elite. We would have to separate ourselves and let them  
14 know that they could work with anybody; they are not  
15 specifically directed to work with us.

16 Q. Were you able, though, to indicate in some way that you're  
17 aware of their relationship with that prior company?

18 A. Yes.

19 Q. Now, what was your understanding of -- withdrawn.

20 Were you told what leads were?

21 A. Yes.

22 Q. What were leads?

23 A. Leads were potential clients.

24 Q. Did you know where leads came from?

25 A. No. A lead source, that's the word they would say, but I

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1 didn't know where they came from. It came from a list.

2 Q. When you were at Olive Branch, did you ever see a lead list  
3 in the entirety?

4 A. Not in its entirety. Bill Sinclair would specifically give  
5 me a certain number of lists. So I wouldn't see every lead  
6 that he had, but they would give me a list to cull through.

7 Q. Now, what was your understanding of the nature of the  
8 product that you were selling to the people where you had got  
9 the list from?

10 A. The nature of the products we were selling?

11 Q. Yes. At the time you were at Olive Branch, before  
12 Youngevity.

13 A. They would be products that can potentially help these  
14 businesses succeed, or make them more complete.

15 Q. So your understanding was the people had already invested  
16 in a business?

17 A. Yes.

18 Q. Other than Youngevity, generally, did you at Olive Branch  
19 sell businesses or sell products that would help the business?

20 A. Products that were supposed to help the business.

21 Q. Do you have some examples?

22 A. An LLC, search engine optimization, marketing and  
23 advertising, business plans, things like that.

24 Q. What was your understanding -- withdrawn.

25 Was your understanding that some of these items also

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1 came with assistance, like coaching or training?

2 MS. KEARNEY: Objection.

3 THE COURT: Sustained as to form.

4 It's your witness, sir.

5 Q. Did you understand whether all of the products that you  
6 were selling stood alone or had other elements involved in  
7 them?

8 MS. KEARNEY: Objection.

9 MR. SCHMIDT: I will withdraw that question.

10 Can we put up BS 11, please.

11 Q. What is BS 11?

12 A. This looks like a sales sheet.

13 Q. Is this the only sales sheet that you ever saw when you  
14 were at Olive Branch?

15 A. No.

16 Q. Were there more than one sales sheet?

17 A. Yes.

18 Q. They changed at times?

19 A. Yes, depending on the fulfillment company that would be  
20 actually doing the work.

21 Q. Now, what was your understanding of what a fulfillment  
22 company was?

23 A. That was a company that actually did the work. I was told  
24 or led to believe that these people in the fulfillment  
25 companies went to school for marketing, online marketing or

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1 business, had business degrees. I was led to believe that  
2 these fulfillment people specialized in completing these  
3 services.

4 Q. Who led you to believe that?

5 A. Bill Sinclair, Michael Finocchiaro, Arash, the ownership  
6 and the management of the company.

7 Q. Now, who were the actual owners?

8 A. Bill Sinclair, Michael Finocchiaro.

9 Q. Was there one more active as an owner than the other?

10 A. Yes.

11 Q. Who was that?

12 A. That was Bill Sinclair.

13 Q. Now, looking at Defense Exhibit BS 11, if you look down,  
14 for example, at business plan, it says "two week training" and  
15 some other words after that.

16 What was your understanding about what that meant?

17 A. They got a two week training, they got a business plan,  
18 business plan booklet, a certain amount of revisions on the  
19 business plan, depending on how much they invested or what tier  
20 or package of business plan they purchased.

21 Q. And the amount of training, did that depend on how much  
22 they are willing to spend for that particular product?

23 A. Yes.

24 Q. Did you believe that it was a real product?

25 MS. KEARNEY: Objection.

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1 THE COURT: Sustained.

2 What was your understanding of what you were selling?

3 THE WITNESS: A business plan. They showed us an  
4 example of a business plan. They explained it as like -- I  
5 don't want to sound like a sales guy, but they explained it  
6 like it's a road map for your business, it shows how to get  
7 from A to B as quickly and safely as possible. It breaks down  
8 the market they are in and things like that. That's what my  
9 understanding of what business plan is. I don't really know  
10 very well what a business plan is.

11 Q. Now, if a customer asked you a question that you did not  
12 know the answer to, what did you do?

13 A. I specifically told clients, if there is an answer I don't  
14 know, I'm not going to sit here and pretend that I do, but I  
15 will either lead you to somebody that will answer it or try my  
16 best to.

17 Q. Did you ask anybody who you were working with to help you?

18 A. Yes.

19 Q. As a salesperson, the first person that would contact -- do  
20 you know the first person who would contact a prospective  
21 customer?

22 A. Yes.

23 Q. Who would that be?

24 A. That would be an appointment setter.

25 Q. And where would that appointment -- if it was successful

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1 and an appointment was set up, what would the appointment  
2 setter do?

3 A. They would put it on the Google calendar.

4 Q. Under whose name?

5 A. Zach Peterson, which is Arash Ketabchi.

6 Q. What was his position at the time you worked there?

7 A. He was a sales floor manager.

8 Q. At some point what would happen to that appointment?

9 A. About five minutes before the hour he would delegate those  
10 appointments to whoever was available. We each had a color, we  
11 each had a name on the calendar. Let's say it was me. He  
12 would put it in Andrew Owens' name. My color was purple. So  
13 that appointment on the calendar would show up as purple and I  
14 would know that that's my appointment. And he would also tell  
15 us you have an appointment, check your calendar.

16 Q. You told us the appointment calendar was under Andrew  
17 Owens?

18 A. Yes.

19 Q. Your name is Andrew Owimrin?

20 A. It is.

21 Q. Why were you using Andrew Owens?

22 A. We were told to use more American names. It's something  
23 that telemarketing people do. If you ever heard or spoke to a  
24 telemarketer, it's probably not their real name, even if it's  
25 from, I don't know --



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1 Q. Did anyone tell you of an example of what happened when  
2 they didn't use an Americanized name?

3 A. Yes, one of my coworkers.

4 Q. What did he tell you?

5 MS. KEARNEY: Objection.

6 THE COURT: Sustained.

7 MR. SCHMIDT: It's for state of mind. It's not for  
8 the truth. It's for the state of mind of my client.

9 THE COURT: All right. I will allow it. Ladies and  
10 gentlemen, not for the truth of what this person supposedly  
11 told him, but simply for its impact, if any, on the state of  
12 mind of Mr. Owimrin.

13 I will allow it.

14 A. A coworker, his name is Louis Jimenez, he worked for The  
15 Tax Club. He was closer in age to me so we kind of connected,  
16 and he told me, you know, how he used to use Louis Jimenez as  
17 his phone name, or he did for a short period of time. And when  
18 he would introduce himself, people would say some nasty things  
19 and hang up on him because of his ethnicity. So he changed it  
20 to Louis Anderson and didn't have that problem again.

21 Q. Were you trying to hide your real name?

22 A. No. I have actually --

23 Q. Now, if the appointment was put in your color, what would  
24 you do?

25 A. I would call it.

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1 Q. Would you look at the appointment?

2 A. Yeah. I would look at the appointment -- I would look at  
3 the description. I would open up the appointment and it would  
4 have a description. It would tell you the name of the client,  
5 their phone number, what lead list it came from. And then if  
6 the appointment setter got any type of information or a feel  
7 for the client, they would say simple things like sweet lady or  
8 not in a good mood, just things so you'd know going into it a  
9 little bit, you have some type of feel for it, as well as if  
10 the client told you if there's any products, sometimes they  
11 would tell them if there's products that they already had.  
12 Whatever information the customer told them they would write  
13 down for us to see so we knew something going in.

14 Q. Now, if the conversation you had -- how long would some of  
15 these conversations, how long would these be?

16 A. They usually would typically last 30 minutes to an hour and  
17 a half or half hour to an hour and a half.

18 Q. If the conversation that you had with the customer was  
19 successful, what would happen, or what would you do?

20 A. First thing I would do would be bring a sales sheet into  
21 Bill Sinclair's office.

22 Q. Who would have filled out that sales sheet?

23 A. I would have filled out the sales sheet while on the phone  
24 with the client.

25 Q. What would happen when it was brought to Bill Sinclair's

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1 office?

2 A. He would do what is called a preauthorization on a credit  
3 card. If it wasn't being put on a credit card, we would just  
4 take it directly to our appointment setters which also did  
5 compliance.

6 Q. Now, was there any restriction of taking only credit cards  
7 from customers at Olive Branch?

8 MS. KEARNEY: Objection.

9 THE COURT: Sustained.

10 Q. Was there any restrictions on the manner that you accept  
11 payment at Olive Branch?

12 MS. KEARNEY: Objection.

13 A. No.

14 THE COURT: I will allow it.

15 You could accept a check, I take it, then?

16 THE WITNESS: You could accept any form.

17 THE COURT: You could accept a check?

18 THE WITNESS: Yes, sir.

19 THE COURT: And cash?

20 THE WITNESS: Nobody sent cash, but you could accept a  
21 check, a wire.

22 THE COURT: A credit card.

23 THE WITNESS: Debit card, credit card.

24 THE COURT: Anything.

25 THE WITNESS: Any form of payment, except for a point

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1 in time we didn't accept American Express, but sometimes we  
2 did, depending on the merchant.

3 BY MR. SCHMIDT:

4 Q. Now, you have heard the testimony about merchant accounts  
5 taking certain percentages of sales. Were you aware at that  
6 time of what percentage the merchant accounts that Olive Branch  
7 worked with was getting per sale?

8 A. No, I did not.

9 Q. Did you have any knowledge of what a merchant account would  
10 get from a sale from your local grocery store?

11 A. No.

12 Q. You were aware though that they were going to get  
13 something?

14 MS. KEARNEY: Objection.

15 MR. SCHMIDT: Withdrawn.

16 Q. In fact, was a form of payment other than credit card  
17 preferred?

18 MS. KEARNEY: Objection.

19 THE COURT: I will allow it, if he knows.

20 A. Yes.

21 Q. Why?

22 A. Because if you got a check or a wire, a form of cash rather  
23 than a credit card, they don't have to pay merchant fees, so  
24 they prefer a credit card -- they prefer a check or cash wire.  
25 That was actually their preference, not credit cards.

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1 THE COURT: And within that check, cash, wire, did  
2 they have a preference?

3 THE WITNESS: No.

4 THE COURT: It didn't matter whether it was a check or  
5 instant cash through a wire?

6 THE WITNESS: It didn't matter.

7 Q. The limitation of their preference that was made known to  
8 you was noncredit cards are better than credit cards?

9 A. Yes.

10 MS. KEARNEY: Objection.

11 THE COURT: Sustained as to form.

12 Q. Now, if it was a credit card and it went to Bill for  
13 preauthorization, what did preauthorization mean?

14 A. As it was explained to me, a preauthorization, it just kind  
15 of puts a hold on a portion of the funds or the funds; whatever  
16 charge you are planning on putting through later, it just holds  
17 that amount, and it also sees if the client actually has it.

18 If it's declined, they wouldn't be able to make that purchase.

19 If they would preauthorize it and the preauthorization went  
20 through, you would know that it will be successful after  
21 contracts are signed and things like that.

22 Q. Now, if it was preauthorized, then what would happen?

23 A. Then I would take the same paper I just handed to Bill, I  
24 would walk from his office into the compliance room. I would  
25 hand whichever compliance rep was available that sheet of

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1 paper. I would walk back to my phone. I would congratulate  
2 them for joining the team. Then I would transfer them over to  
3 compliance to go through the contracts.

4 Q. Now, if they were going to send a wire or a check or a  
5 money order, was there any part that you skipped?

6 MS. KEARNEY: Objection.

7 A. I would have to --

8 THE COURT: Just a minute.

9 Sustained.

10 Q. What would happen if they were going to be paid by check,  
11 money order, wire, not a credit card?

12 MS. KEARNEY: Objection.

13 THE COURT: What was the procedure used if a credit  
14 card was not the method of payment?

15 THE WITNESS: It depended. If it was a wire, we would  
16 have to go and ask Bill which account he wanted to put it to.  
17 So we would have to get the account information, wire  
18 information, routing number, the address of the bank from Bill,  
19 so we could give that information to the client so they could  
20 actually conduct the wire transfer.

21 With a check, we just gave them our address to send  
22 the check to our office. And then instead of it going to Bill  
23 for preauthorization, it would just go directly to compliance.

24 Q. Now, after it goes to compliance and there were no problems  
25 concerning the customer, would you ever have contact with that

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1 customer again?

2 A. No.

3 Q. Did there come a time that there were some times problems  
4 with the customers?

5 A. Yes.

6 Q. Generally, were you the one dealing with the problems?

7 A. No.

8 Q. What was your understanding of who was dealing with the  
9 problems?

10 A. Michael Finocchiaro was in charge of that.

11 Q. Now, did there come a time during the time that you were at  
12 Olive Branch where you did actually speak to customers after  
13 you finished what you understood to be your role?

14 A. Yes.

15 MS. KEARNEY: Objection.

16 THE COURT: I will allow that.

17 A. Typically it would be right after the preauthorization or  
18 the completion, when they would be reading through the  
19 contract, they would have questions. So I would go and try to  
20 answer those questions. If I was not available, if I was on  
21 another call already, Bill would come and answer those  
22 questions.

23 Q. How often did that happen?

24 A. A handful of times, maybe two handfuls, maybe ten times.

25 Q. Now, were there other occasions that you would be asked to

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1 contact a client that you sold a product to?

2 A. Yes.

3 Q. What would that be?

4 A. That would be when a client was trying to cancel or charge  
5 back and Michael Finocchiaro was either not in the office or  
6 just didn't feel like doing it.

7 Q. What would you do?

8 THE COURT: Let me go back a little bit. When you  
9 said that there were a handful of times, maybe two handfuls,  
10 maybe ten times, during what period of time was that? Was that  
11 both at Olive Branch and at A1?

12 THE WITNESS: No. That would just be from the Hoboken  
13 office where I started to when I ended in Clifton, all at Olive  
14 Branch.

15 THE COURT: All at Olive Branch.

16 THE WITNESS: Yeah. That's what I was speaking about.  
17 I wasn't talking about A1 as well.

18 Q. Now, did you ever receive any requests from fulfillment  
19 people?

20 A. Yes. If they were having trouble contacting a client that  
21 purchased a product, they would either reach out to myself or  
22 Fino or appointment setters. They would notify us that they  
23 are having trouble reaching the client. So we would call them  
24 to get them to answer the phone for their fulfillment  
25 appointments.



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1 Q. What is your understanding -- withdrawn.

2 How often did you deal with fulfillment people?

3 A. Not often.

4 Q. Were you told what company or people were involved in the  
5 fulfillment?

6 MS. KEARNEY: Objection.

7 THE COURT: I will allow it for his state of mind.  
8 Again, not for the truth of what was said.

9 A. I was told names and I was also given a printed out list of  
10 the company names and the fulfillment members for those  
11 companies.

12 Q. Now, I am going to show you Exhibit A02.

13 Do you see that exhibit?

14 A. Yes, I do see it.

15 Q. Is this a document that was given to you by anyone?

16 A. Yes.

17 Q. Do you recall who gave it to you?

18 A. Bill Sinclair.

19 Q. Do you recall what was the purpose of it?

20 A. To know the names of the fulfillment members. If a client  
21 called one of us to say who's Christina, I would know that  
22 Christina is part of our fulfillment team, so I would let that  
23 client know that's part of our fulfillment team. Or I could  
24 notify them that you will be speaking with Sally. She will be  
25 the one on your account. She is the one that takes care of

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1 LLCs. So things of that nature. Just so I could know who they  
2 are and let the customer know who will be speaking to them  
3 next.

4 MR. SCHMIDT: I offer this as Exhibit A02.

5 MS. KEARNEY: We object on 801 grounds.

6 MR. SCHMIDT: It's being offered for his state of  
7 mind, your Honor, not for whether these people are real names.

8 THE COURT: I am going to sustain the objection.

9 Q. Were you given other lists concerning fulfillment people  
10 who worked for other companies?

11 A. Yes.

12 Q. Did you have any reason to believe that these fulfillment  
13 people were not doing their jobs?

14 MS. KEARNEY: Objection.

15 A. No.

16 THE COURT: I will allow that.

17 A. No, I did not. Actually, in fact, one of the --

18 THE COURT: You have answered the question.

19 Next question.

20 Q. I want to go back to the calendar. I am going to give you  
21 a hard copy of AOC01 to 35.

22 Look through briefly the documents.

23 A. I see it.

24 Q. Now, could you describe generally what these documents are?

25 A. This is an appointment -- these are all appointments from a

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1 Google calendar. It's not the exact format, but I could tell  
2 that it's from my Google calendar, which I will see on my  
3 calendar. When I click on it, this is what would show up.

4 Q. In other words, this is not what you would actually see on  
5 the screen at your desk, but this is from the calendar if you  
6 printed it out?

7 A. If I opened up the bullet point on the screen, this would  
8 pop up.

9 Q. Now, you told us that some of the information when you were  
10 setting appointments, that you made appointments with leads, is  
11 that correct?

12 A. Yes.

13 Q. Now, the information concerning the name and/or telephone  
14 number or address of the leads, that would come from some other  
15 source, is that right?

16 MS. KEARNEY: Objection.

17 THE COURT: Rephrase it.

18 Q. The original information about the lead came from some  
19 other source, didn't it?

20 MS. KEARNEY: Objection.

21 Q. Where did the original information of the lead come from?

22 THE COURT: I will allow it.

23 A. In the calendar, it would come from the appointment setter,  
24 as it shows here. And it's set up --

25 MS. KEARNEY: Objection, your Honor. This document is

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1 not in evidence.

2 THE COURT: This is not in evidence?

3 MS. KEARNEY: No.

4 MR. SCHMIDT: It's not in evidence.

5 THE COURT: All right.

6 A. Yes, it would be from the appointment setter.

7 Q. Where would the appointment setter -- you were an  
8 appointment setter. Where would you get the name and telephone  
9 number from?

10 A. They would get it from a list, the lead list.

11 Q. Would it be fair to say that you did not know that  
12 information was accurate when you saw it on a lead list?

13 MS. KEARNEY: Objection.

14 THE COURT: I will allow that.

15 Did you have any understanding as to the accuracy of  
16 the information on the lead list?

17 THE WITNESS: I believed it to be accurate. I had  
18 nothing to tell me otherwise.

19 Q. Now, what would the appointment setter do with the  
20 information of the name and telephone number of the lead?

21 A. She would copy and paste it and put it into the subject;  
22 she would copy and paste the name, the number, the lead source.

23 Q. What was the first thing that an appointment setter would  
24 do with the lead?

25 A. She would call it, set up the appointment, or try to set up

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1 the appointment, attempt to set up an appointment, and then put  
2 it on a Google calendar under that person's name.

3 THE COURT: Is the appointment setter personnel the  
4 same as the compliance personnel?

5 THE WITNESS: Yes.

6 THE COURT: I take it you were here when you heard  
7 testimony that those people were, quote, essentially  
8 secretaries. Do you remember that testimony?

9 THE WITNESS: Yes.

10 THE COURT: Do you agree with that?

11 THE WITNESS: I do agree.

12 Q. Were the appointment setters required at work to put that  
13 information in the Google calendar?

14 A. Yes, they were.

15 Q. And it was necessary for the running of the business to  
16 have that information put in the calendar, otherwise there  
17 wouldn't be a business?

18 MS. KEARNEY: Objection.

19 THE COURT: Sustained as to form. This is direct  
20 examination, not summation.

21 Q. Now, the record that was made in the calendar, was that  
22 made by the appointment setter at about the time that she was  
23 setting the appointment with the lead?

24 A. Yes.

25 Q. Were those records put in and kept in the calendar in the

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1 course of the business of Olive Branch?

2 A. Yes.

3 Q. Was the entry made by the appointment setter made as a  
4 normal part and a regular part of the business?

5 A. Yes, to my understanding.

6 Q. Now, there's other information that is generally put into  
7 the calendar at some point, is that right?

8 MS. KEARNEY: Objection.

9 MR. SCHMIDT: I am trying to lay a foundation, Judge.  
10 That's all I am doing.

11 THE COURT: I will allow it.

12 MS. KEARNEY: Just so you know, I think we are going  
13 to have a total objection if Mr. Schmidt moves this document  
14 into evidence. It may need to be discussed at sidebar for  
15 planning purposes.

16 THE COURT: You can answer that question, sir.

17 A. Yes.

18 Q. Now, if the appointment was put -- withdrawn.

19 Who decided who got the appointment?

20 A. Arash.

21 Q. How was it shown that he made a decision?

22 A. He made it seem like it was whoever was available at the  
23 time, but we kind of knew he was getting into who he favored.

24 Q. How was it indicated on the calendar that somebody --

25 A. They would put it in their name.

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1 Q. What does that mean when you were looking at your calendar?

2 A. I would see if it was in my name or in somebody else's  
3 name.

4 Q. Was there any other way of seeing whose name it was under?

5 MS. KEARNEY: Objection.

6 THE COURT: I will allow it.

7 A. You would see whose name it was under at first, you could  
8 see it's under Zach, and then he would change it.

9 Q. When you looked at the calendar --

10 A. You would see the customer names up there.

11 Q. How were each individual salesman divided up on the Google  
12 calendar, by what?

13 A. By colors.

14 Q. So it was easy to see who it was because of the color?

15 MS. KEARNEY: Objection.

16 A. Yes.

17 THE COURT: I will allow it.

18 Q. Now, if it was your color, your appointment, what would you  
19 do?

20 A. I would call the appointment.

21 Q. What was your responsibility in relation to the calendar  
22 while you were talking to the person or immediately thereof?

23 A. I would have to take notes on the client. When I was  
24 talking to them, if I didn't do it while I was speaking, I  
25 would have to update it and put notes in there after.

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1 Q. Was that a requirement for you to do it?

2 A. Yes.

3 Q. When you did it, did you do it at the time that you were  
4 talking to the person or immediately thereof?

5 A. Either/or. I wasn't very good at taking notes.

6 Q. Was the calendar kept in the ordinary course of business?

7 A. Yes, it was.

8 Q. Was it required in the regular practice for the salesperson  
9 to make those entries in the calendar?

10 A. Yes.

11 MR. SCHMIDT: Now, your Honor, I move Defense Exhibit  
12 AOC01 to AOC35 into evidence.

13 MS. KEARNEY: We object, your Honor.

14 THE COURT: Sidebar.

15 (Continued on next page)

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1 (At the sidebar)

2 THE COURT: Yes, ma'am.

3 MS. KEARNEY: There are multiple layers of hearsay in  
4 this document. Even assuming arguendo that Mr. Schmidt has  
5 laid a business records foundation, which based on Mr.  
6 Owimrin's statement that he didn't take very good notes I don't  
7 think he has, these notes contain statements of the victims he  
8 spoke to on the phone. Those statements are not business  
9 records.

10 MS. FLETCHER: Your Honor, I don't want to interrupt,  
11 but might this be a good time for the jury to take the morning  
12 break? It's almost noon.

13 THE COURT: I didn't even realize that. Yes.

14 (In open court)

15 THE COURT: Ladies and gentlemen, I didn't realize how  
16 late it was. The attorneys just brought that to my attention.  
17 I apologize.

18 (Jury exits courtroom)

19 (Recess)

20 (Continued on next page)

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Owimrin - direct

1 (In open court; jury not present)

2 THE COURT: Counsel, sidebar -- we don't have to do  
3 sidebar. The jury is not here. Government?

4 MS. KEARNEY: Yes, your Honor, these are calendar  
5 entries. The defendant, first off, has testified that he  
6 didn't actually take very good notes --

7 THE COURT: Yes, I did notice that.

8 MS. KEARNEY: -- in making these entries.

9 Second, there is no indication he was, no indication  
10 he was the one made these entries. Sometimes he testified the  
11 appointment person would make it, sometimes he would make it  
12 when they were on the calls. To the extent Mr. Schmidt is  
13 attempting some sort of recorded recollection, there is no  
14 indication these are --

15 THE COURT: It doesn't work under recorded  
16 recollection. Deal with it under business records.

17 MS. KEARNEY: Since Mr. Owimrin testified he didn't  
18 take very good notes, there is actually no duty to accurately  
19 record and report any of this information in this document.

20 Putting that aside, your Honor, these are statements  
21 by third parties, the victims in this case, who are not --

22 THE COURT: There are a lot of entries here by the  
23 appointments people just saying when they were setting up  
24 appointments.

25 MS. KEARNEY: Most of these entries are recounting

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1 things that were told by the appointment setter on the phone,  
2 so just on the first page, "has used all personal funds" --

3 THE COURT: Yes, the first page is the weirdest one.

4 MS. KEARNEY: Page 3, invested \$7,000 in LLC, was  
5 given additional traffic. Page 4, still can't squeeze even a  
6 thousand bucks out of --

7 THE COURT: Wait, wait. When you say Page 4?

8 MS. KEARNEY: I am sorry. Page 5.

9 THE COURT: Just a moment. So you're saying that it's  
10 hearsay, it is the statements of who the government calls the  
11 victims?

12 MS. KEARNEY: Correct.

13 THE COURT: Mr. Schmidt.

14 MR. SCHMIDT: Your Honor, first of all, it is  
15 admissible under both business records and 803 (6).

16 THE COURT: It is business records.

17 (Off-the-record discussion).

18 THE COURT: Let's take it first under 803 (6), and you  
19 can -- under 803 (6), the problem is that it would be hearsay  
20 within 803 (6) documents and a lot of this does seem to be  
21 hearsay. It is the statements of who the government calls the  
22 victims.

23 MR. SCHMIDT: There is no question that some of the  
24 information was obviously obtained from the person that, the  
25 salesperson, whether Mr. Owimrin or otherwise, got from the

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1 customer. One of the problems --

2 THE COURT: It is hearsay.

3 MR. SCHMIDT: -- one of the problems we have here,  
4 Judge, is that you have started calling the customer the  
5 victim.

6 THE COURT: No. I didn't before the jury, absolutely  
7 not.

8 MR. SCHMIDT: Here is the problem.

9 If this was a case where the government was saying  
10 that Mr. Owimrin lied on these three occasions and committed  
11 fraud on those three occasions, and that's why he is guilty,  
12 the defense would be much more limited by choice and by law to  
13 deal with that issue.

14 The government has not taken that position. The  
15 government has taken the position that this whole business is a  
16 scam, and our client is part of the whole business scam, and so  
17 that his knowledge and understanding and belief are now  
18 completely in issue.

19 So when my client is working in this business that the  
20 government says is a scam, we are trying to show that how he is  
21 dealing with it, how he sees others are dealing with it, right,  
22 impacts on his belief on whether or not this is a lawful  
23 endeavor, a belief it is a lawful endeavor he is involved in or  
24 that it is a scam.

25 You cannot separate that. The statements of the

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1 witnesses, the customers here, right, whether they're accurate  
2 or not, right, is not significant. It's how the salesperson,  
3 especially Mr. Owimrin, acts because he is now looking or have  
4 read that information. He accepts it as true; and, therefore,  
5 it impacts on how he is conducting himself, the knowledge that  
6 he has and his intent and motive.

7 THE COURT: Just a moment. I am not quite sure what  
8 all of that was about, but I can say I very much agree with you  
9 that whether or not your client intentionally committed a  
10 crime, his state of mind is important, obviously, that I agree  
11 with. I am not quite sure what all the other stuff was.

12 MR. SCHMIDT: Judge, they've asked for a conscious  
13 avoidance charge.

14 THE COURT: I understand that.

15 MR. SCHMIDT: Now, conscious avoidance charge  
16 acknowledgment means that somebody is confronted with certain  
17 facts that they should have been gone forward to check on  
18 things.

19 THE COURT: Right.

20 MR. SCHMIDT: Right, and if they didn't --

21 THE COURT: They put their head in the sand and they  
22 saw all of the warning flags flying. I understand that.

23 MR. SCHMIDT: What the government is trying to do is  
24 only put in the quote warning flags and prevent us from putting  
25 in everything else that is going on around him for two and a

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1 half years and why these were not red flags that should cause  
2 him to seek further knowledge.

3 It seems to be fundamentally unfair for the government  
4 to take the position, right, that there are red flags, but  
5 prevent us from showing those red flags in context.

6 THE COURT: Why don't you deal with the evidentiary  
7 issue we have at the moment, which is the hearsay statements  
8 within what's arguably a business record because the hearsay  
9 statements should not be coming in.

10 For example, on the first page, all of that is, I  
11 would think, what the customer, the client is telling  
12 Mr. Owimrin.

13 MR. SCHMIDT: So it is coming in for his state of mind  
14 for a number of reasons. It is, one, how he conducted himself  
15 when he obviously heard --

16 THE COURT: But your state of mind, the way you assert  
17 the state of mind exception, it lets everything come in because  
18 by your very verbiage, anything that is happening in the  
19 business affects his state of mind. You just said that.

20 MR. SCHMIDT: Absolutely.

21 THE COURT: So anything involved in this business  
22 comes into this trial under that theory?

23 MR. SCHMIDT: No, no. If he doesn't know about it, it  
24 doesn't affect his state of mind. He has to know about it.  
25 That is why we have these from his calendar, so these are the

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1 ones that he knows about.

2 For example, Judge, the government puts in their  
3 witnesses some clearly people who are victims and who look like  
4 they're taken a advantage of, and is arguing that this is the  
5 nature of the business, while trying to avoid having my client  
6 explain why he dealt with those particular people the way he  
7 did because this is how he dealt with everybody else, and  
8 during the course of his work over there he saw people who  
9 wanted to go forward, wanted to do something, some people who  
10 didn't want to do something, some people who sought his advice,  
11 some people said thank you but we are not interested, and he  
12 didn't push it any more.

13 So the government is just trying to take this  
14 microcosm of the life of Andrew Owimrin for two and a half  
15 years and condense it only for the things that they want to  
16 come in.

17 THE COURT: All right. Government, I understand what  
18 you're saying. There is no limiting principle to what you're  
19 arguing, sir, and that is the problem.

20 MR. SCHMIDT: But we are not trying to prove that  
21 these people did this, this and this. All we're trying to  
22 prove is that my client believed these people did this, this  
23 and this, and you can instruct the jury to that. I don't care.

24 MS. KEARNEY: Mr. Owimrin is free to testify that  
25 based on information that he was provided, he believed these

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1 people had gotten XYZ or wanted to purchase ABC, but putting in  
2 statements that have gone through an appointment setter to  
3 Mr. Owimrin, when it is not clear who made the statements, who  
4 wrote down the statements, in what context they were recorded  
5 has no indicia of reliability here.

6 To the extent this is a business record, Mr. Owimrin's  
7 statement that his notes weren't very good, and we don't know  
8 about the practice of other appointment setters, I would argue,  
9 your Honor, 806 (e) is implicated. -

10 THE COURT: Let me read this about the opponent.

11 MR. SCHMIDT: May I address that one point, your  
12 Honor?

13 THE COURT: Not until I read this.

14 (Pause)

15 THE COURT: Yes.

16 MR. SCHMIDT: Two things:

17 One, what Mr. Owimrin meant and would be able to  
18 testify is when they say take down good notes, they complained  
19 he didn't take down enough notes, so later on he started making  
20 better notes. That is what we meant by that. It wasn't that  
21 he put down wrong stuff, he wasn't caring about what he wrote  
22 down, it was just he hadn't done enough. It is irrelevant to  
23 that point.

24 Whether or not the source of the information or the  
25 method and circumstance of the preparation indicate a lack of



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1 trustworthiness is ridiculous because if the information that  
2 the note the appointment setter was given was not correct, then  
3 they wouldn't be able to contact the people to make an  
4 appointment.

5 THE COURT: All right, Ms. Kearney, what is your  
6 point?

7 MS. KEARNEY: That is incorrect. The only information  
8 you need to contact the victim is the name and number.

9 THE COURT: I already discarded that last phrase.  
10 Go ahead.

11 MS. KEARNEY: The majority of these records are from  
12 2014, which is the beginning of the phase where Mr. Schmidt now  
13 says his notes weren't very good and they got better over time.

14 THE COURT: All right. I am going to allow this in,  
15 but with a limiting instruction. Bring the jury in. I am  
16 trying to make sure that --

17 MS. KEARNEY: If it is coming in, your Honor, the  
18 government does not request a limiting instruction. We prefer  
19 your Honor not give one.

20 THE COURT: All right. Fine.

21 MR. SCHMIDT: Your Honor, if I understand correctly,  
22 is the government saying they want to use the hearsay --

23 THE COURT: The government is saying given my ruling,  
24 they don't want a limiting instruction. Obviously, that lets  
25 them cross him on these documents.

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1 MS. KEARNEY: Given your Honor's ruling, we withdraw  
2 our objection to the admission of this document.

3 THE COURT: All right. So given the gamesmanship,  
4 Mr. Smith, are you still proffering it?

5 MR. SCHMIDT: Yes.

6 THE COURT: Bring the jury in. How much longer do you  
7 have, sir?

8 MR. SCHMIDT: Obviously, with all of the objections --

9 THE COURT: It is no different than anything we have  
10 been doing so far. It doesn't add any time.

11 MR. SCHMIDT: If I have to do this the way to avoid  
12 objections, your Honor, we probably have like two or three more  
13 hours to go.

14 THE COURT: Jury entering.

15 (Jury present)

16 THE COURT: Mr. Owimrin, if you would take the stand  
17 again, you may. You may be seated in the courtroom.  
18 Mr. Schmidt, you may continue with your examination.

19 What do you want this document to be marked?

20 MR. SCHMIDT: 80C 01 through 80C 35.

21 (Defendant's Exhibits 80C 01 through 80C 35 received  
22 in evidence)

23 BY MR. SCHMIDT:

24 Q. I ask you to look at 80C 01 in evidence.

25 THE COURT: Mr. Owimrin has reminding me he is still

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1 under oath. Sir, next question.

2 BY MR. SCHMIDT:

3 Q. Andrew, the information on the top that says William  
4 Frederick Ryan and the phone name. Where did that come from?

5 A. That came from the appointment setter.

6 Q. What does Paramount mean after that?

7 A. At that time we were using Paramount and Olive Branch. It  
8 was directed by Bill Sinclair depending on which lead it was to  
9 call, either Paramount or Olive Branch, they were appointments  
10 I would put in the subject.

11 Q. So the name Paramount or Olive Branch, did that determine  
12 what merchant account any credit card was put under?

13 A. Yes.

14 Q. So if the word "Paramount" is on there, what does that mean  
15 to you when you speak to the customer?

16 A. It just means that's the merchant account that they would  
17 be using if they were to be a purchaser or charge.

18 THE COURT: Why is that relevant to you?

19 THE WITNESS: Just because we have to let the  
20 potential client know how it would show up on their statements  
21 if there was a charge or what the contract would look like. If  
22 it was going through the Paramount merchant account, it would  
23 say Paramount. If it was Olive Branch, it would be the Olive  
24 Branch contract.

25 BY MR. SCHMIDT:

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1 Q. During the time you were at Olive Branch, did they use  
2 other merchant accounts, other company names?

3 A. Yes.

4 Q. Can you tell us some of them.

5 A. Paramount, Olive Branch Marketing, A1 Business Consultants,  
6 A1, there is a second A1. I forget what it is called now.  
7 Business Development Center was one that we use as a merchant  
8 account, and Sunset, those are the ones I remember off the top  
9 of my head.

10 Q. Now, did you have any understanding of what those other  
11 ones, what kind of companies they were?

12 MS. KEARNEY: Objection.

13 A. No.

14 THE COURT: Sustained.

15 BY MR. SCHMIDT:

16 Q. Were you responsible in any way in determining the merchant  
17 account used or company name used?

18 THE COURT: Did you determine which merchant account  
19 or company name was to be used?

20 THE WITNESS: No.

21 THE COURT: Next.

22 BY MR. SCHMIDT:

23 Q. Looking at this, the information after the date, where does  
24 that information come from?

25 A. That comes from me or the sales rep usually. This one

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1 right here came from me.

2 Q. Now, look at 2.

3 A. Okay.

4 Q. Now, there is up on the top subject line says, "Bill  
5 no-show." What does that mean?

6 A. That means they were a no-show, somebody tried calling them  
7 and they no-showed, they didn't pick up the first time they  
8 tried calling.

9 Q. The information under the date --

10 THE COURT: Why Bill no-show?

11 THE WITNESS: I think that Bill portion has to do with  
12 Yahoo.

13 THE COURT: You don't think Bill is Sinclair?

14 THE WITNESS: No.

15 THE COURT: Next.

16 BY MR. SCHMIDT:

17 Q. So the information below was something that you would have  
18 put in or somebody else had to put in?

19 A. That would be what I put in.

20 Q. Does that mean at some point you were able to talk with  
21 him?

22 A. Yes.

23 Q. When there was a no-show for the specific appointment,  
24 would you or the salesperson immediately give up?

25 A. No. Either myself or the appointment center would try to

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1 call back.

2 Q. I'd ask you --

3 THE COURT: When it says CC were maxed, what is CC?

4 THE WITNESS: Their credit cards were maxed.

5 THE COURT: What is maxed?

6 THE WITNESS: Maxed out, that means they were at their  
7 limit, they had no more available credit.

8 THE COURT: All right.

9 BY MR. SCHMIDT:

10 Q. Did you attempt to open a credit card for them?

11 A. No.

12 MS. KEARNEY: Objection.

13 THE COURT: If he remembers, I will allow it.

14 THE WITNESS: I remember at this time --

15 THE COURT: Sir?

16 THE WITNESS: No.

17 THE COURT: Next.

18 BY MR. SCHMIDT:

19 Q. Did there come a time that you did help customers to open  
20 credit cards?

21 A. Yes.

22 Q. How long were you at Olive Branch before that happened,  
23 approximately?

24 A. From about, I'd say, almost a year.

25 Q. How often did you do that?

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1 A. I didn't do it very often.

2 Q. Was there anybody you were aware of on the sales floor who  
3 did that very often?

4 A. Yes.

5 Q. Who was that?

6 A. Peter DiQuarto.

7 Q. Now, on this one, did these people -- what was the result  
8 of your conversation with this person?

9 A. The result of this was it wasn't a sale. We just, they had  
10 investment.

11 THE COURT: How do you know that? Do you know that  
12 from this document or you remember this particular couple and  
13 know it from your experience?

14 THE WITNESS: We're talking about three now, AC or --

15 THE COURT: Three, I am sorry, turning to three now,  
16 the same question, how do you know that there was no sale?

17 THE WITNESS: If there was typically a sale, I would  
18 put in the description sold or sale and the amount.

19 THE COURT: Thank you. Next question.

20 BY MR. SCHMIDT:

21 Q. Let's skip to 80C 06. Now, you see the words under the  
22 date. Is that something that you put there?

23 A. Yes.

24 Q. Now, what is an Amazon affiliate site?

25 A. It would be an affiliate website, affiliate website with

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1 Amazon.com. You could have your own personal website and sell  
2 Amazon products on there. Amazon would be acting a as job  
3 share.

4 Q. You testified earlier you would be selling basically  
5 products for people who already had an open company. What were  
6 you told? What type of companies would have been opened on  
7 behalf before you spoke to them?

8 MS. KEARNEY: Objection.

9 THE COURT: Sustained.

10 BY MR. SCHMIDT:

11 Q. What type of company? Were you trained when you are  
12 selling the product to learn what the company you were selling  
13 the products for?

14 A. Yes.

15 Q. What kind of company did you come in contact with?

16 What kind of company, to your knowledge, while you  
17 were at Olive Branch you were selling products for?

18 A. It was three at that time, typically three, merchant,  
19 businesses processing businesses, Amazon affiliate websites and  
20 drop ship websites businesses.

21 Q. Now, let's skip to 08. Below Amy set appointment and found  
22 in premier choice richy, there is --

23 THE COURT: Put 08 up, please.

24 Q. -- did you put some of the information down on this?

25 A. Yeah, I put the sale amount and the LLC, potential LLC



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1 names that she would have and obviously her account number or  
2 the payment.

3 Q. So what kind of funds were used to make a sale?

4 A. This was either a direct wire or a check. It looks like it  
5 was a direct wire. I didn't have a check number on there so  
6 direct wire or wire transfer.

7 Q. Now, I ask you to take a look at 9. Did this document tell  
8 you who made the sale?

9 A. Yes.

10 Q. Why was this document be on your website?

11 MS. KEARNEY: Objection. Objection. I am confused by  
12 the question.

13 THE COURT: Why was this document on your web --

14 MR. SCHMIDT: I'll rephrase the question.

15 THE COURT: Rephrase it.

16 BY MR. SCHMIDT:

17 Q. Why would a sale by Louis Anderson be on your calendar?

18 A. For an upsell, to try to sell more product.

19 Q. So you say the first sale, it was the -- was the  
20 information that says sales -- withdrawn.

21 What were you supposed to do with this information?

22 A. I was supposed to figure out what type of products she had  
23 bought with Louis, trying to figure out what she bought  
24 previously and I would see what she would need or potentially  
25 need.

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1 Q. What is an upsell?

2 A. It is a second sell.

3 THE COURT: Selling more product?

4 THE WITNESS: Selling more product.

5 THE COURT: Getting more business?

6 THE WITNESS: Getting more business.

7 THE COURT: You were a salesman?

8 THE WITNESS: Yes.

9 THE COURT: That was your job?

10 THE WITNESS: It was, yes.

11 BY MR. SCHMIDT:

12 Q. Does this indicate whether or not that upsell was  
13 successful?

14 A. Yes.

15 Q. Was it successful?

16 A. No.

17 THE COURT: And again if I understand your testimony,  
18 you know it wasn't successful because there was no statement on  
19 this that you sold her anything more, is that it?

20 THE WITNESS: No. This one in the subject bar, it  
21 says broke.

22 THE COURT: It says broke? What does that mean?

23 THE WITNESS: We just used simple words to notify if  
24 it was broke are or broken leads. She had no funds or she just  
25 didn't want to move forward. She just could have --

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1 THE COURT: You say broke?

2 THE WITNESS: Yeah. It could have been broke, like  
3 physically broke or it could have been mean a broken lead in  
4 the sense of they do not wish to purchase any more products  
5 until they see some results.

6 BY MR. SCHMIDT:

7 Q. I ask you to take a look at 11. Did you make a sale here?

8 THE COURT: How many more of these do you have, sir?  
9 There were 35 separate pages here?

10 MR. SCHMIDT: I going to probably do another 10 or so,  
11 your Honor.

12 THE COURT: Move on.

13 MR. SCHMIDT: I am trying to do as best I can.

14 THE COURT: These are in evidence. You can make  
15 whatever argument you want.

16 MR. SCHMIDT: There are explanations in here.

17 THE COURT: Your time!

18 BY MR. SCHMIDT:

19 Q. I ask you to look at No. 11.

20 A. Yes.

21 Q. Did you make the sale there?

22 A. I did.

23 Q. Why there? What do the names under usual sale name?

24 A. On 11?

25 Q. 11?

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1 A. The three business names.

2 Q. Yes.?

3 A. That was for potential LLC names.

4 Q. Did you sell a lot of LLCs during your time at Olive  
5 Branch?

6 A. Yes.

7 Q. You have heard the testimony of the witnesses who purchased  
8 LLCs about what the pitch was to them about the LLC or the LLC  
9 was used for. Do you remember those things?

10 A. Yes, I do.

11 Q. Was that accurate?

12 A. Yes, to my knowledge.

13 Q. Now, when it says don't, don't call for a reminder, what  
14 does that mean?

15 A. This client just did not wish -- if she had an appointment  
16 set, we didn't need to call them to remind them the day before.  
17 This particular client did not want the call to -- (inaudible).

18 Q. I ask you to take a look at 12. Underneath found on JF  
19 marketing, right, other than happy. Is that something that you  
20 wrote?)

21 A. At 12?

22 Q. 12, yes?

23 A. I was on 10. Sorry. Do you want me to read it?

24 Q. No. Is that something that you wrote, if you remember?

25 A. It looks like something that I wrote, right.

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1 THE COURT: Why do you say that? It is typed. Why do  
2 you say it looks like something you would write?

3 THE WITNESS: Just because I was fairly broad with my  
4 notes. It looks like something I was writing as I was speaking  
5 to the client.

6 THE COURT: Next question.

7 BY MR. SCHMIDT:

8 Q. Now, were there customers that you spoke to that expressed  
9 their both either happiness or unhappiness with the companies  
10 that they had?

11 A. Yes.

12 Q. Do you have an idea of the percentage that expressed  
13 happiness, neutral and unhappiness?

14 A. I don't, I don't have a percentage. It was fairly even  
15 throughout.

16 THE COURT: If you don't have a percentage, you don't  
17 have a percentage. Next.

18 BY MR. SCHMIDT:

19 Q. I ask you to look at 13. Now, it has Andrew a thousand and  
20 Steve 997 at the bottom. Do you see that?

21 A. Yes, I do.

22 Q. How did that come about?

23 A. On this particular pitch, I didn't know how to pitch a  
24 logo, so we split. I got him on the phone to do the logo  
25 portion of it because I didn't know, I never sold a logo, I

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1 didn't know how to describe or explain it. I got him on after  
2 I pitched the LLC, and we split the sale.

3 Q. Now, I ask you to look at 14.

4 Now, do you know what this person meant when saying  
5 supposed that 10,000 customers a site, not there yet?

6 A. Traffic.

7 MS. KEARNEY: Objection.

8 THE COURT: Pardon me?

9 MS. KEARNEY: Testifying about --

10 MR. SCHMIDT: Withdrawn.

11 BY MR. SCHMIDT:

12 Q. What is your understanding of what that person meant?

13 MS. KEARNEY: The same objection.

14 THE COURT: No. I will allow his understanding.

15 A. You're supposed to get a thousand customers or 10,000  
16 customers to a site, but the number is not there yet, starting  
17 to get direct traffic to his website clicks basically.

18 Q. Did your company do that?

19 A. We did.

20 Q. Is that one of the products that --

21 A. That was one of our products, yes.

22 Q. I ask you to take a look at 15.

23 A. Right.

24 Q. Did you attempt to make any kind of pitch to this woman?

25 A. I did not. I did -- (inaudible) -- sorry.

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1 Q. Look at No. 17. What is pitched by Andrew Owimrin on the  
2 spot mean?

3 A. That means the appointment center called to set up an  
4 appointment, and the client wanted to speak right then and  
5 there and didn't want to set an appointment, so they were  
6 transferred to whoever was available.

7 Q. Does the "going for surgery Monday" help you understand  
8 what happened?

9 A. Yes, they were going for surgery Monday, so we just kind of  
10 let go. We said we would call back at a later date after --

11 Q. Look at 18, please. What did you sell there?

12 A. I sold an LLC.

13 Q. Did you sell a lot of LLCs?

14 A. Yes.

15 Q. Why?

16 A. That was the product that I was able to learn. That was  
17 the one I was most familiar with. That was the easiest for me  
18 to pitch, and it was what I felt comfortable pitching.

19 Q. Let's look at 21. What kind of funds were used for this  
20 sale?

21 A. It was a check, cash.

22 Q. I ask you to take a look at 22. This one has Youngevity on  
23 it. Now, you talked before about the products that you and  
24 your company sold that would help distant companies. How was  
25 Youngevity doing?

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1 MS. KEARNEY: Objection.

2 THE COURT: Rephrase it.

3 BY MR. SCHMIDT:

4 Q. How was Youngevity as a product different than the product  
5 that you were selling prior to Youngevity?

6 A. It was sold as a complete business, a complete website.

7 Q. Now, taking a look at this, do you think you sold any  
8 Youngevity packages prior to this?

9 A. Prior to this, no.

10 Q. How did the idea of Youngevity, selling Youngevity at Olive  
11 Branch, how were you informed that this was something that was  
12 going to happen?

13 A. I was informed by Bill Sinclair, Mr. Finocchiaro and Arash  
14 they would be bringing in Anthony Medeiros, who would be  
15 explaining and introducing this new product that we could sell,  
16 that we will be selling.

17 Q. Did they give you any information that would inform you as  
18 to what the basic package contained?

19 A. Yes.

20 Q. Would you put up Government Exhibit 234 A, Page 6. Do you  
21 see the highlighted portion?

22 A. Yes.

23 Q. Is this what information they gave you? Is this some of  
24 the information they gave you?

25 A. Yes, that's Youngevity.



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1 Q. Do you know if anything else could be sold with that?

2 A. Yes, they told me what products to sell with it.

3 Q. What kind of products could be sold or upgraded products  
4 could be sold?

5 A. There is different levels of Youngevity that come with  
6 higher levels of marketing, but add-ons would be YouTube, Press  
7 Release, LLC, Corporate Credit Tax.

8 Q. Now, you have testified that one of the things that was  
9 made very clear to you at the beginning, that they were going  
10 to -- there must be no earning claims when you sold the  
11 products that you sold prior to Youngevity, right?

12 A. Yes.

13 Q. Was there anything a little different?

14 Was anything explained to you a little differently as  
15 it related to Youngevity?

16 A. Yes.

17 Q. What was that?

18 A. With Youngevity, we could tell these clients that after 60  
19 to 90 days, they could potentially receive a check or they will  
20 receive a check, no specific amount, but a check.

21 Q. Payments, was there anything discuss about after that first  
22 check?

23 A. Yes, unlike the other businesses they had, we get paid on a  
24 monthly basis or quarterly basis with Youngevity, you would get  
25 paid out on a biweekly basis.

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1 Q. Who told you that? Who gave you this information?

2 A. Anthony Medeiros.

3 Q. Was anyone, was any of your employers with Mr. Medeiros  
4 when this occurred?

5 A. Yes.

6 Q. What was your understanding of how the process would take  
7 place when somebody bought your deal on Youngevity?

8 A. When they purchased the Youngevity program, they would get  
9 a website that would take up to 10 to 14 business days. They  
10 would get a variety, a sample of products they could choose to  
11 sell on their website during that same time period, 10 to 14  
12 business days, then the marketing and the advertising would  
13 take 60 to 90 days to kick in and actually start generating  
14 traffic for these clients or potential clients.

15 Q. Were you familiar with Youngevity prior to this?

16 A. No.

17 Q. Now, did anybody in the business, to your knowledge, also  
18 buy Youngevity package?

19 A. Yes.

20 Q. Who?

21 A. Bill Sinclair, Michael Finocchiaro, Arash Ketabchi.

22 Q. Now, who were the people who were supposed to build a  
23 website and provide the marketing and the social media, et  
24 cetera?

25 A. Anthony Medeiros and his fulfillment team.

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1 Q. What was your expectation that would happen if you sold a  
2 Youngevity package to a customer?

3 A. That they would get everything that was promised to them,  
4 they would get their website, their marketing and they would  
5 make money.

6 Q. Now, we talked about previously people making either  
7 charge-back requests or complaints. Did you see any  
8 charge-back requests related to Youngevity while you were at  
9 Olive Branch?

10 A. Not, not, not till later.

11 Q. Now, were you told to change your statement about  
12 Youngevity at any point while you were selling it?

13 A. Yes.

14 Q. Could you tell us about that.

15 A. Yes. Bill Sinclair had called a meeting with the office,  
16 and he told us that Anthony Medeiros and his fulfillment team  
17 was having trouble keeping up with the volume of sales and  
18 getting the websites built, so instead of saying 60 to 90 days,  
19 we would have to stick with 90 days, it would take 90 days just  
20 because they were backed up in actually getting the products  
21 completed or services completed.

22 Q. Were you involved in any way of payments to the Youngevity  
23 owners of the money that they were supposed to get for selling  
24 the product?

25 A. No.

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1 Q. What was your understanding about what a person who  
2 purchased a Youngevity package needed to do to get their  
3 website up and running and the marketing and social media done?

4 A. Nothing.

5 Q. Who told you that?

6 A. Anthony Medeiros and Bill Sinclair, Michael Finocchiaro,  
7 Arash Ketabchi.

8 Q. When you were selling media, social media and marketing  
9 packages for other companies, all right, to people --  
10 withdrawn.

11 Prior to Youngevity and after Youngevity, when you  
12 sold things such as YouTube or marketing or SEO, search -- or  
13 social media packages to people, were those people required to  
14 do anything to get those products?

15 A. No.

16 Q. Who was supposed to do all of those things?

17 A. Our fulfillment team.

18 Q. Now, could a person purchase a Youngevity package  
19 participate in ways that might increase their chances of  
20 earning more money?

21 A. Yes.

22 Q. How would that be?

23 A. They would be able to direct people to their website, they  
24 could advertise on their website, they could physically go  
25 door-to-door and sell products, or they could have people sign

IB1JKET3

Owimrin - direct

1 up and get a Youngevity website themselves. There are three  
2 ways basically.

3 Q. I ask you to take a look at 23. Do you see the bottom line  
4 of 23, is that something that you wrote in?

5 A. Yes.

6 Q. What did you mean by that?

7 A. I told to reach out to coach for answers. He was asking me  
8 questions, but I didn't have answer for him so I told him to  
9 reach out to his coaches or whoever he spoke to prior.

10 Q. Were there times when you actually spoke to customers that  
11 you sold to to help get them to start communicating with their  
12 coaches?

13 A. Yes.

14 Q. How would that happen?

15 A. I would get either a notification from Bill, Fino, one of  
16 the secretaries, or I could get a notification on our  
17 messenger, we used Skype at the time, the fulfillment team  
18 would each out and ask us to try to call them so they could get  
19 them on their fulfillment call and get them on their  
20 appointments.

21 Q. I ask you to take a look at 25. Do you see how the pitch  
22 of \$9,997.00 dropped to \$7,997.00?

23 A. Yes.

24 Q. How would that have occurred?

25 A. That would have occurred because he didn't want to go with

IB1JKET3

Owimrin - direct

1 that highest package or that high package, so we would have  
2 lowered some of the weeks, a size of the SEO, social media  
3 marketing, and we would lower that product, approximately  
4 throwing a complimentary or free press release it says here, so  
5 we would drop the price to get the sale.

6 Q. Did many of the products have different levels?

7 A. Yes.

8 THE COURT: Was it your decision when to reduce the  
9 price, drop products and reduce the price?

10 THE WITNESS: If it was just dropping the tier of the  
11 product, it was a business plan, and for me to drop it from  
12 gold tier to a silver tier, I could make that decision, but if  
13 I was just changing the price in general, let's say LLC, which  
14 is 1200, if I wanted to sell it for 600, I had to ask for  
15 permission to do that.

16 Q. Was there some flexibility that you were allowed to have  
17 before you had to ask permission, say, for an LLC, for example?

18 A. Yeah, we were allowed to go down to it was either 700 or  
19 \$900.00 before we had to ask. I think it was dependent on the  
20 state.

21 THE COURT: Next question.

22 BY MR. SCHMIDT:

23 Q. Now, I ask you to take a look at 31.

24 THE COURT: How many more of these do you have because  
25 you're over your estimate already and I want to move forward

IB1JKET3

Owimrin - direct

1 here.

2 MR. SCHMIDT: I apologize, your Honor. I am moving as  
3 fast as I can.

4 THE COURT: How many more of these do you have?

5 MR. SCHMIDT: I have three more, including this one.

6 THE COURT: That is essentially every one. Let's go.

7 Next question.

8 BY MR. SCHMIDT:

9 Q. I ask you to look at 31.

10 A. Yes.

11 Q. Now, did you make a sale here?

12 A. No.

13 Q. Did you have a number of people that you spoke with that  
14 were having problems with their fulfillment of the companies  
15 that they purchased from?

16 A. Yes.

17 Q. How would you deal with that?

18 A. Either, let's say, here can't get a website, part of the  
19 website they get it, we were able to get permission from Bill  
20 to give them a free website and obviously sell them other  
21 products with that free website.

22 Also what I would do, I would tell them to reach out  
23 to the company that they spoke to or purchased with previously  
24 and figure out what that issue is.

25 Q. I ask you to take a look at 33. Do you recognize the name

IB1JKET3

Owimrin - direct

1 of it, don't you?

2 A. I do.

3 Q. Did you sell her the Youngevity, the Corporate Credit and  
4 the Silver Bookkeeping on September 17th, 2014?

5 A. I don't recall when I sold her on that September 17th. I  
6 did do the upsell.

7 Q. You did sell, you did sell Diane Weissenberger?

8 A. Yes, I did.

9 Q. Now, when you went to work with Arash, you went to work for  
10 the company called A1. Is that right?

11 A. Yes.

12 Q. But A1 was used before while you were at Olive Branch  
13 wasn't?

14 MS. KEARNEY: Objection.

15 A. Yes.

16 THE COURT: Just a moment.

17 MS. KEARNEY: To form, your Honor.

18 THE COURT: Rephrase it. It is unclear what you're  
19 asking, sir.

20 BY MR. SCHMIDT:

21 Q. Now, were you familiar with A1 prior to moving with Arash  
22 to another sales?

23 A. Yes.

24 Q. What was your understanding how -- what was your  
25 understanding about the existence of A1?



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Owimrin - direct

1 A. It is my understanding that was Arash's LLC merchant  
2 account, his merchant account was through A1.

3 Q. How come it was used while you were on the Olive Branch  
4 floor?

5 A. Because Arash was basically partners with Bill, and  
6 although he was the manager, he, you know, he got merchants to  
7 help us conduct business.

8 Q. Were you ever asked to open up a merchant account?

9 A. I was.

10 Q. How did that come about?

11 A. Bill had confronted me and told me that they were having  
12 issues with processing. He said we have processing, but he  
13 always wants to have more, his businesses runs by processing,  
14 lives by processing. He always wanted to have backup  
15 processing and have more, and he asked me to apply and asked me  
16 if I wanted now to apply. I could use a few extra dollars a  
17 month if could I do it.

18 THE COURT: What is a few extra dollars?

19 THE WITNESS: It would vary depending on how much I  
20 got approved for or how much the merchant account was left to  
21 put through for each month and actually how much they used it,  
22 so he said I can make anywhere from 500 to up to \$3,000 a  
23 month.

24 THE COURT: Depending on how much was sold?

25 THE WITNESS: Yes.

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Owimrin - direct

1 THE COURT: To use that merchant account?

2 THE WITNESS: Yes.

3 THE COURT: Sell more and make more?

4 THE WITNESS: Exactly.

5 BY MR. SCHMIDT:

6 Q. So what did you have to do first to open up a merchant  
7 account?

8 A. I had to get an LLC.

9 Q. Did you do it?

10 A. I did not.

11 Q. Who did it?

12 A. I paid for it, but our fulfillment team.

13 Q. What happened after forming an LLC?

14 A. You go down to the bank with your EIN number, employer  
15 identification number, and open up a business bank account, a  
16 business checking, business savings, and then apply for -- I  
17 assume apply for a merchant account. I don't know. Bill had  
18 me fill out a bunch of papers.

19 MS. KEARNEY: He testified he doesn't know how it  
20 worked.

21 THE COURT: Let's move on.

22 BY MR. SCHMIDT:

23 Q. Let's back up. What was the name of the LLC?

24 A. It was Core Business Services.

25 Q. So after you opened up the account, bank account, what was

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Owimrin - direct

1 supposed to be done to apply for a merchant account?

2 A. I gave all that information to Bill. He filled out, had me  
3 fill it out, and he filled out himself a booklet for a merchant  
4 account, for an application for a merchant account.

5 THE COURT: In your name?

6 THE WITNESS: In my name, yes.

7 BY MR. SCHMIDT:

8 Q. Was it in your name or your company's name?

9 A. The business name, Core Business, Core Business was in my  
10 name.

11 Q. Did you ask anyone else that you knew to open up a merchant  
12 account?

13 A. I did.

14 Q. Who did you ask?

15 A. I asked my girlfriend at the time if she wanted to do it.

16 Q. Anybody else?

17 A. Ah --

18 Q. I withdraw that.

19 Now, did you think there was anything wrong or illegal  
20 or bad in opening up a merchant account in your name to help  
21 basically Olive Branch Marketing?

22 A. No.

23 Q. Would you have asked your girlfriend to do it if you  
24 thought there was anything wrong?

25 MS. KEARNEY: Objection.

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Owimrin - direct

1 THE COURT: Sustained as to form.

2 BY MR. SCHMIDT:

3 Q. Did anyone else, to your knowledge, open up a merchant  
4 account to assist in the processing for Olive Branch?

5 A. Yes.

6 Q. Who?

7 A. There were several co-workers, my cousin, they asked my  
8 aunt to open up a merchant account. I do know people that had  
9 applied and actually had been approved and used their merchant  
10 accounts.

11 Q. Now, were you aware of the issue of Charge-backs at some  
12 point at Olive Branch?

13 A. Yes.

14 Q. What was your understanding of what the charge-back was.

15 A. It was somebody that called their credit card companies up  
16 and charged-back, initiated a dispute.

17 Q. Did you ever see any papers relating to what the customer  
18 said was a dispute?

19 A. No.

20 THE COURT: Mr. Schmidt, before we get into the  
21 subject of charge-backs, it is 5 of 1:00. It this a logical  
22 point to give the jury its lunch break?

23 MR. SCHMIDT: Yes, it is.

24 THE COURT: Be back by 2:00 o'clock. Keep an open  
25 mind. Enjoy the beautiful day.

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Owimrin - direct

1 (Jury excused)

2 THE COURT: You may step down, sir. 2:00 o'clock.

3 (Luncheon recess)

4 (Continued on next page)

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IB18KET4

1 AFTERNOON SESSION

2 2:00 p.m.

3 (Jury not present)

4 THE COURT: Mr. Schmidt, there is an issue?

5 MR. SCHMIDT: Yes, your Honor. One of the exhibits  
6 that I am going to be offering into evidence is the arrest  
7 photo of Mr. Owimrin to show what he looked like when he was  
8 arrested, and it has on top supervision.uscourts.gov. He is  
9 going to testify that this was a photo taken when he was  
10 arrested on this case.

11 THE COURT: And the purpose?

12 MR. SCHMIDT: The purpose is to show this is what he  
13 looked like when he was arrested.

14 THE COURT: And the purpose?

15 MR. SCHMIDT: As opposed to the photograph that the  
16 government put in and what he looked like.

17 THE COURT: Government.

18 MS. KEARNEY: The government sees no relevance of  
19 putting in a photograph of Mr. Owimrin. They have been looking  
20 at him for a week and a half.

21 THE COURT: I think that's right. Explain a little  
22 more, sir. You're showing me a photograph of Mr. Owimrin. I  
23 see it. Surprisingly, it looks very much like Mr. Owimrin.  
24 What is the purpose? I don't mean to be flip.

25 MR. SCHMIDT: I understand, your Honor. The

IB18KET4

1 government chose to put in a photograph of my client when he  
2 looks really, really bad.

3 THE COURT: Let me see the photograph that you have.

4 MS. KEARNEY: We also object on 403 grounds, and I can  
5 lay that out after you have had a chance to take a look.

6 THE COURT: I have two photos in my hand. Which one  
7 is the one that's in evidence?

8 MS. KEARNEY: The one with a blue back.

9 THE COURT: The one that says Government Exhibit 706.

10 MS. KEARNEY: That's the DMV photograph.

11 THE COURT: That's on his license?

12 MS. KEARNEY: Correct. It's my understanding that was  
13 taken after his arrest.

14 MR. SCHMIDT: It was not taken after his arrest. It  
15 was taken before his arrest, and the photograph from the  
16 previous license was put onto the newer one after the arrest.

17 THE COURT: Government Exhibit 706 is in evidence put  
18 in by the government. What do you want to show, Mr. Schmidt?  
19 Do you want them to see this picture?

20 MR. SCHMIDT: That is correct.

21 THE COURT: Let me look at it. It says on it AOL.2.  
22 On top it says supervision.uscourts.gov.

23 MR. SCHMIDT: Your Honor, he is going to be testifying  
24 shortly about his drug use, and he is going to be testifying  
25 that at the time of the arrest he was no longer using drugs.

IB18KET4

1 They have a photo of him over there where there is no  
2 indication when that photo was taken.

3 THE COURT: Are you talking about Government Exhibit  
4 706?

5 MR. SCHMIDT: Yes. I want the photograph of him taken  
6 when he was arrested.

7 THE COURT: AOL.2.

8 MR. SCHMIDT: Yes.

9 To confirm his testimony when he says that he was not  
10 on drugs when he was arrested.

11 THE COURT: How does this confirm one way or the other  
12 whether he was on drugs?

13 MR. SCHMIDT: It certainly distinguishes what he  
14 looked like in the government exhibit at an unknown date.

15 THE COURT: I understand.

16 Government, what difference does it make?

17 MS. KEARNEY: I see no relevance to this.

18 Based on Mr. Schmidt's opening, in which he referenced  
19 the government trying to put his client away -- I think your  
20 Honor at sidebar said he was drawing bars across him -- putting  
21 in this picture, which is clearly a mugshot, bolsters that  
22 argument for Mr. Schmidt that the government is somehow bearing  
23 down on his client and trying to put someone away.

24 In addition, Mr. Schmidt indicated to me when we took  
25 our lunch break that he wants that superscript at the top to



IB18KET4

1 prove that his client is telling the truth when he says that  
2 that was taken while he was on supervision. He is trying to  
3 bolster his client's testimony here.

4 MR. SCHMIDT: Judge, I want that to come in to show  
5 and to confirm that when he testifies he was not on drugs when  
6 he was arrested, his life had changed, that they don't have any  
7 kind of doubt that the photograph in the government exhibit is  
8 what he looked like at the time of his arrest. This is what he  
9 looked like. It confirms that when he was arrested his life  
10 has changed.

11 THE COURT: I don't think it makes much difference one  
12 way or the other. I am not going to exclude it under 403.  
13 This is the picture, AOL.2.

14 MS. KEARNEY: If they would like to take a picture of  
15 Mr. Owimrin in his current state, in which I assume he is not  
16 using drugs, we would be happy to have them offer it. I don't  
17 know for what reason. But to offer something that is clearly a  
18 mugshot with a government Web site on the top implies that the  
19 government is using its resources to basically crush Mr.  
20 Schmidt's client.

21 MR. SCHMIDT: I don't know what you are talking about.  
22 He was arrested.

23 THE COURT: Bring this jury in. I will allow it. I  
24 will give the jury all the pictures of Mr. Owimrin they want.

25 What is your estimate now that you have had lunch to

IB18KET4

Owimrin - Direct

1 whittle it down, sir?

2 MR. SCHMIDT: It's a long and difficult process  
3 because my client has a lot of witnesses that he has to testify  
4 about.

5 THE COURT: What is your estimate now that you had  
6 lunch to whittle it down, sir?

7 MR. SCHMIDT: An hour and a half.

8 THE COURT: Let's move.

9 (Continued on next page)

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IB18KET4

Owimrin - Direct

1 (Jury present)

2 ANDREW OWIMRIN, resumed.

3 THE COURT: Please be seated in the courtroom.

4 Mr. Schmidt, you may continue with your direct  
5 examination of Mr. Owimrin.

6 BY MR. SCHMIDT:

7 Q. Mr. Owimrin, I am going to show you a photograph marked  
8 AOL1-2.

9 THE COURT: Show it to him. Walk up here and give it  
10 to him.

11 Next question.

12 There it is. It's up.

13 Q. Is that you?

14 A. Yes, sir.

15 Q. When was that photograph taken?

16 A. This is when I was arrested.

17 THE COURT: In this case?

18 THE WITNESS: In this case.

19 THE COURT: Next question.

20 MR. SCHMIDT: Could you show 706, government 706.

21 THE COURT: Is that a picture of you, sir?

22 THE WITNESS: Yes, sir.

23 THE COURT: When was that taken?

24 THE WITNESS: A few years prior.

25 THE COURT: Next question.

IB18KET4

Owimrin - Direct

1 Q. Were you using drugs when that picture was taken?

2 THE COURT: When what picture was taken, 706?

3 Q. 706.

4 A. Yes.

5 Q. Before you started working at Olive Branch, had you  
6 experimented with any drugs?

7 A. Yes.

8 Q. What drugs?

9 A. Marijuana. I tried mushrooms before, and Ecstasy a couple  
10 of times as well.

11 Q. Had you stopped using -- were you still using marijuana  
12 when you first went to work at Olive Branch?

13 A. No.

14 Q. Now, did there come a time at Olive Branch when you were  
15 introduced to oxycodone?

16 A. Correct.

17 Q. How did that happen?

18 A. Michael Finocchiaro had invited me to go to a Giants game  
19 with him. I went with him to a New York Giants game. We were  
20 tailgating. He offered me a pill and I took it.

21 Q. Had you known that Fino had been using drugs before then?

22 A. No.

23 Q. What happened after that first time you used drugs with  
24 Fino?

25 A. He became more comfortable showing his drug use, I guess

IB18KET4

Owimrin - Direct

1 his addiction or his habit. I saw him doing it in the office,  
2 and I would join him and do it with him.

3 Q. Where did you obtain these drugs?

4 A. From Michael Finocchiaro, as well as his friend Anthony  
5 Medeiros, who also introduced Youngevity to us.

6 Q. Now, did you become addicted to them?

7 A. Yes.

8 Q. How many were the most that you were taking a day?

9 A. 15.

10 THE COURT: 15 what?

11 THE WITNESS: 30 milligram Roxicet, which is like a  
12 oxycodone.

13 THE COURT: 30 milligram what?

14 THE WITNESS: Oxycodone, Roxicet.

15 Q. Where were you obtaining those from?

16 A. Anthony Medeiros and Michael Finocchiaro.

17 Q. How much were you paying either Anthony Medeiros or Mike  
18 Finocchiaro?

19 A. 18 to 22 dollars each, depending on how many I got at once.

20 Q. Did there come a time that you tried to stop using it?

21 A. Yes.

22 Q. What did you do to try to stop using it?

23 A. I went to a detox, Bergen Regional Medical Center detox.

24 THE COURT: When was this?

25 THE WITNESS: This was in the end of winter, beginning

IB18KET4

Owimrin - Direct

1 of spring 2015, I believe.

2 THE COURT: Next.

3 Q. How long were you in detox?

4 A. About a week.

5 Q. What did you do afterwards?

6 A. I went right back to work the day I got out.

7 Q. Was Mr. Finocchiaro still working there?

8 A. Yes.

9 Q. Was he still doing oxycodone?

10 A. Yes.

11 Q. What happened after -- did you start doing oxycodone  
12 immediately?

13 A. No.

14 Q. Did there come a point where you started doing it again?

15 A. Yes.

16 Q. Was there an event that led to it?

17 A. Yes.

18 Q. What happened?

19 A. A close friend of mine got into an accident and he became  
20 paralyzed, and it was just something that I leaned on as a  
21 crutch.

22 Q. When you started using it again, how much were you paying  
23 for it?

24 A. \$22 each.

25 Q. Where were you getting it from?

IB18KET4

Owimrin - Direct

1 A. Michael Finocchiaro and Anthony Medeiros.

2 THE COURT: Approximately when was this?

3 THE WITNESS: This was, I want to say --

4 THE COURT: How long was it after the detox?

5 THE WITNESS: About six months.

6 THE COURT: So you were clean for about six months?

7 THE WITNESS: Yes.

8 THE COURT: Next.

9 Q. How were you paying for it?

10 A. Cash.

11 Q. Where were you getting the money?

12 A. From work.

13 THE COURT: You mean your earnings?

14 THE WITNESS: My earnings, yes, my earnings from work.

15 Q. Did the purchase and the use of oxycodone pills put a  
16 financial strain on you?

17 A. Yes.

18 Q. What did you do to continue paying for your drugs?

19 A. I got a loan. I asked a friend if he knew anybody that  
20 could give me a loan. He referred me to a loan shark, the  
21 guy's name was John, I don't know his last name.

22 Q. Who is the friend?

23 A. Brian Shalansky.

24 Q. Where did you know him from?

25 A. From work. He worked at The Tax Club and then he worked

IB18KET4

Owimrin - Direct

1 with us.

2 Q. That loan, how much were you paying off on that loan?

3 A. It was about a \$10,000 loan or \$8,000 loan, and I was  
4 paying \$1,000 a week. They call it seven points were going to  
5 interest and the -- I had to give him \$1,000. \$700 would go  
6 into his pocket and \$300 would actually go the principal debt.

7 Q. Did there come a point that you were paying money for the  
8 loan to a person other than who you borrowed it from?

9 A. Yes.

10 Q. Who was that? Who did you pay that money to?

11 A. To Arash.

12 Q. How did that happen?

13 A. It became a little bit too much for me to -- I couldn't  
14 obviously afford my drug habit and \$1,000 a week loan. So I  
15 had asked Arash -- I actually started working for him, and I  
16 asked if I could get a loan from him. He said no, but he said  
17 that his uncle would be able to do it. So I got a loan from  
18 his uncle to pay off the loan shark. Then I had to pay off his  
19 uncle with an agreed upon \$1500 a month rather than a \$1,000 a  
20 week.

21 Q. At what interest rate?

22 A. What interest rate for his uncle?

23 Q. Yes.

24 A. Like I said, it was \$1500 a month.

25 Q. For how long?



IB18KET4

Owimrin - Direct

1 A. 12 months.

2 Q. How much money was borrowed?

3 A. \$10,000.

4 Q. How was the money collected?

5 A. Arash.

6 Q. How did he collect that money?

7 A. He took it out of my pay; he took it out of my earnings.

8 Q. How were you paid when you worked there, was it salary or  
9 commission?

10 A. Commission.

11 Q. At that time, did you have any kind of arrangements with  
12 any of the workers about how you would split the commissions?

13 A. Yes.

14 Q. What was that?

15 A. Me and my cousin Reagan were the only two sales reps on the  
16 floor at that time, so we came up with an agreement that  
17 whatever he sold we would split, and whatever I sold we would  
18 also split our commission.

19 Q. Now, did there come a time that you no longer could afford  
20 to use Oxycontin?

21 A. Correct.

22 Q. What did you start doing?

23 A. Heroin.

24 Q. How long did you do that?

25 A. It seems like a long time, but it was -- obviously I

IB18KET4

Owimrin - Direct

1 couldn't even give you -- maybe three, four months.

2 THE COURT: When did you start that?

3 THE WITNESS: Pretty much right when we moved from  
4 Clifton to work for Arash.

5 THE COURT: When was that?

6 THE WITNESS: This was in late 2015.

7 THE COURT: All right. Next.

8 Q. Did there come a time you went into detox again?

9 A. Yes.

10 Q. Approximately when was that?

11 A. That was in, I want to say spring of 2016.

12 Q. Now, after you came out of detox there, did you go back to  
13 work for Arash?

14 A. No.

15 Q. Where did you go?

16 A. I went to work for Bill Sinclair at Consumer Shield.

17 Q. When you went back to Bill Sinclair, what happened in  
18 regards to drug use?

19 A. I started using again.

20 Q. Where did you get it from?

21 A. Michael Finocchiaro and Anthony Medeiros.

22 Q. Did there come a point when you left them?

23 A. Yes.

24 Q. After you left them, did you continue using drugs?

25 A. For a short period of time.

IB18KET4

Owimrin - Direct

1 Q. When you were arrested were you using drugs?

2 A. No.

3 Q. Have you used drugs since that time?

4 A. I was smoking marijuana at that time, but I was not doing  
5 opiates or heroin.

6 Q. After you were arrested, have you been using any kind of  
7 drug?

8 A. No, sir.

9 Q. I want to ask you to take a look at Exhibit 140.

10 You see that exhibit?

11 A. Yes, sir.

12 Q. Now, you see what was sold to Ms. LaMorte?

13 A. Yes. It looks like Youngevity.

14 Q. Did you sell any other product that had that paragraph?

15 A. Yes. I added corporate credit.

16 Q. The part that has starter kit, etc., up to corporate  
17 credit, is that paragraph unique to the Youngevity sales?

18 A. Yes. That's the Youngevity products.

19 Q. Now, when you sold Youngevity, did the customer, the  
20 potential customer -- withdrawn.

21 You explained what was the difference between selling  
22 the Youngevity package with the other items in relation to  
23 statements concerning earnings. Do you remember that?

24 A. Yes.

25 Q. Did some of the potential customers ask you to give them an

IB18KET4

Owimrin - Direct

1 estimate of how much they were going to make?

2 A. Yes.

3 Q. How would they do that?

4 A. They would just ask me, how much am I going to make, give  
5 me a number. They would push for me to give them an amount of  
6 how much they would make.

7 Q. What was your response to that?

8 A. My response was, I can't. I would literally tell them it's  
9 illegal for me to make earnings claims. I can't promise you.  
10 There are so many different variables that come into play. I  
11 couldn't predict how much they would make.

12 Q. If the potential customers were persistent, what would you  
13 say?

14 A. I would give them examples of how much clients have made  
15 previously with us using Youngevity.

16 Q. What kind of amounts would you talk about?

17 A. A couple hundred dollars, \$200, \$300, \$800. We had one  
18 client, to my knowledge, that earned \$3,000. It varied.

19 Q. So how did it come to your attention that the customer made  
20 \$3,000?

21 A. Management -- Arash Ketabchi, Bill Sinclair, Michael  
22 Finocchiaro -- would notify us when a check would come in for  
23 whatever client that had Youngevity.

24 Q. As to that one person who made that large amount of money,  
25 how did you hear of that?

IB18KET4

Owimrin - Direct

1 A. They announced it to the office. They showed  
2 us -- actually, Arash Ketabchi lifted up the check at his desk  
3 and showed us. They got the guy on a conference call, and he  
4 was speaking about how he made money.

5 THE COURT: This was a check made out to the purchaser  
6 of Youngevity?

7 THE WITNESS: Yes.

8 THE COURT: Why did Arash have a check made out to  
9 somebody else?

10 THE WITNESS: Basically, the checks would go to the  
11 office first and they would distribute it. Because they were,  
12 I guess, the top of the --

13 THE COURT: Pyramid?

14 THE WITNESS: Pyramid.

15 Q. Did you hear anything about whether Mike, Arash or Bill  
16 invested in Youngevity?

17 A. Yes.

18 Q. What did you hear?

19 A. They all had -- they all invested in Youngevity.

20 Q. Did you have a conversation with Arash about investing in  
21 Youngevity?

22 A. Yes. I asked him if I could invest in Youngevity myself.

23 Q. Why did you ask him that?

24 A. To try and make some extra money.

25 Q. What did he say?

IB18KET4

Owimrin - Direct

1 A. He said no.

2 Q. At that time, did you have any reason to disbelieve what  
3 Bill, Mike or Arash were saying about Youngevity?

4 MS. KEARNEY: Objection.

5 THE COURT: Sustained.

6 Q. Did you believe them?

7 A. Yes.

8 MS. KEARNEY: Objection. What time period?

9 THE COURT: Pardon me?

10 MS. KEARNEY: What time period are we talking about?

11 THE COURT: What time period?

12 THE WITNESS: When Youngevity pretty much first  
13 started.

14 Q. How many times did you hear about money going to customers  
15 who purchased Youngevity during the first eight months of  
16 Youngevity being sold?

17 THE COURT: What were the first eight months, what  
18 time period are we talking about? When was Youngevity being  
19 sold early on?

20 THE WITNESS: From when Youngevity started or when we  
21 got it?

22 THE COURT: From when you were selling it.

23 THE WITNESS: Right when we first got Youngevity, or  
24 was introduced to Youngevity, about two weeks after being  
25 introduced to it we were selling it.

IB18KET4

Owimrin - Direct

1 THE COURT: On the calendar, when was that?

2 THE WITNESS: That was probably late or early 2015  
3 to -- probably early 2015, to my knowledge.

4 MR. SCHMIDT: Your Honor, I would like to show Mr.  
5 Owimrin Defense Exhibit AOC 22.

6 THE COURT: Next question.

7 Q. Now, do you have a better memory of when actually a sale of  
8 Youngevity first took place at Olive Branch?

9 A. September, end of September 2014. So late 2014, early  
10 2015.

11 Q. You heard the testimony in the video of Charlene Foster.  
12 Did you sell Charlene Foster?

13 A. Yes.

14 MR. SCHMIDT: Would you put up Exhibit No. 102.

15 Q. What did you sell Charlene Foster?

16 A. An LLC, a business plan, corporate credit, tax prep, and we  
17 gave her a free laptop.

18 Q. What would that mean as to what she had already owned if  
19 you sold her those products?

20 A. She would have a business already, that's what it would  
21 mean, a running business.

22 Q. Now, would these items here necessarily provide a regular  
23 earnings from these products?

24 A. These products wouldn't generate you an income, no. You  
25 wouldn't make money off of these products. The LLC could help

IB18KET4

Owimrin - Direct

1 with legitimacy, but it wouldn't make you money.

2 Q. Now, at the time that you were selling these products, were  
3 you aware of other products that were being sold that would  
4 provide earnings to a customer?

5 MS. KEARNEY: Objection.

6 THE COURT: Sustained as to form.

7 Q. Would you sell products like these to someone who did not  
8 have an actual -- withdrawn.

9 Would you sell these products to somebody if you  
10 didn't believe they had an actual business?

11 A. No.

12 Q. Why not?

13 A. There is no point in having them if you don't have a  
14 business.

15 Q. And when you sold this to Ms. Foster on or about the 15th  
16 day of October 2015, what was your belief or understanding of  
17 whether she had a business at that time?

18 A. She had a business at that time.

19 Q. Do you know what the business was?

20 A. Yes.

21 Q. What was it?

22 A. Youngevity.

23 Q. Did you sell her Youngevity?

24 A. I did.

25 Q. When did you sell her Youngevity?



IB18KET4

Owimrin - Direct

1 A. At Olive Branch, maybe a month prior.

2 Q. When you talked with her --

3 THE COURT: So your testimony is, if I understand you  
4 correctly, that by selling her Youngevity, she was engaged in  
5 conducting a business of her own, is that right?

6 THE WITNESS: Correct.

7 THE COURT: All right.

8 Q. So when you talked with her, did you have any trouble in  
9 communications?

10 A. No.

11 Q. Now, after this sale, did you receive your commission for  
12 it?

13 A. I did.

14 Q. What happened to that commission?

15 A. I had to give it back.

16 Q. Why?

17 A. Because she charged back; she canceled.

18 Q. How did you know that?

19 A. Arash Ketabchi informed me that she charged back.

20 Q. How were you paid for your commission?

21 A. By check.

22 Q. How did you pay back Mr. Ketabchi?

23 A. By cash.

24 THE COURT: What was the amount of your commission on  
25 the sale of Youngevity to Ms. Foster?

IB18KET4

Owimrin - Direct

1 THE WITNESS: It would have been 10 percent.

2 THE COURT: And what was that?

3 THE WITNESS: That was a \$15,000 sale or 10,000. It  
4 would have been 10 percent. So it would have been either  
5 \$1,000 or \$1500.

6 Q. Did you ever learn whether or not the chargeback for  
7 Ms. Foster was reversed?

8 A. No.

9 Q. Did you ever receive any money back from Mr. Ketabchi?

10 A. No.

11 Q. Did you ever speak to Ms. Foster after that?

12 A. No, I did not.

13 Q. Were the products that you sold her, did that include  
14 coaching and training?

15 A. Yes.

16 Q. Who would be involved in that activity, the coaching and  
17 training?

18 A. The fulfillment center, the fulfillment team.

19 Q. Now, do you have any idea of how much the fulfillment team  
20 is paid to fulfill contracts that you or other salesmen entered  
21 into with customers?

22 A. No.

23 Q. Did you know how much, either at Olive Branch when you were  
24 there or with Mr. Ketabchi when you were there, how much they  
25 were paying for leads to customers?

IB18KET4

Owimrin - Direct

1 A. No.

2 Q. Did you know how much they were paying, the percentage, for  
3 their merchant accounts?

4 A. No.

5 Q. Now, you have heard the testimony of Diane Weissenberger,  
6 correct?

7 A. Yes.

8 Q. Did you sell her?

9 A. Yes.

10 Q. Did you up-sell her?

11 A. Yes.

12 Q. Now, Diane Weissenberger testified that you or someone said  
13 that the goal for the first year in earnings was six figures.  
14 Do you remember her testifying to that?

15 A. I do remember.

16 Q. Did you say that?

17 A. No.

18 Q. Would you ever say anything like that for a Youngevity  
19 product?

20 A. No.

21 Q. Did you ever say anything like that for any product?

22 A. No, sir.

23 Q. Now, who was the first person who caused you to know the  
24 name of Jane Thompson?

25 A. Emily Miller and Arash.

IB18KET4

Owimrin - Direct

1 Q. Now, did you sell to Jane Thompson?

2 A. Yes.

3 MR. SCHMIDT: Can you put up the first contract,  
4 please.

5 Q. Do you recall the products that you sold Jane Thompson?

6 A. Yes.

7 Q. What were the products that you sold Jane Thompson?

8 A. It was the normal products I usually sold: LLC, business  
9 plan, corporate credit, tax services.

10 Q. Now, what would that mean to you that you sold those  
11 products?

12 A. That would mean that she already had a business.

13 Q. Do you remember the conversation that you had with Ms.  
14 Thompson when you were trying to sell her some of the products?

15 A. I do.

16 Q. Would you tell us about the conversation you had with her?

17 A. From what I remember, she had a merchant processing  
18 business and another business, I believe it was an affiliate  
19 market Web site, and she was excited. She was excited about  
20 having the opportunity to work from home and she was excited  
21 about these endeavors that she was pursuing.

22 Q. Would you have made any earnings claims --

23 MS. KEARNEY: Objection.

24 Q. Did you make any earning claims to --

25 THE COURT: Sustained as to form.

IB18KET4

Owimrin - Direct

1 Q. -- Ms. Thompson relating to that sale?

2 A. No.

3 Q. Now, after you made that sale, did you become aware of  
4 another sale to her from A1?

5 A. After I made that sale? Repeat the question. I'm sorry.

6 Q. This is Government Exhibit 163.

7 You see that the date of this sale is the 29th of  
8 December?

9 A. Yes.

10 Q. And you see the products that are being sold?

11 A. Yes.

12 Q. Do you recall if you or another salesperson made this sale?

13 A. Yes.

14 Q. Who made this sale?

15 A. Connor Swanson.

16 Q. Who was Connor Swanson?

17 A. That was my cousin, Reagan Owimrin.

18 Q. Was Connor Swanson his phone name?

19 A. Yes.

20 Q. Did you adopt a different phone name when you left Olive  
21 Branch and went to A1?

22 A. Yes.

23 Q. What name did you adopt?

24 A. Jonathan Stewart.

25 Q. Why did you adopt a different name?

IB18KET4

Owimrin - Direct

1 A. Because we switched companies, just Arash told us to change  
2 names. We were working for different companies. It was a  
3 different ownership, different people, so he told us that we  
4 need to switch our names.

5 Q. Now, during the time that you were at Olive Branch, did you  
6 use any other name other than Andrew Owens when you were  
7 selling?

8 A. Not when I was selling, no.

9 Q. When you were at A1, did you use Jonathan Stewart when you  
10 were selling?

11 A. Yes.

12 Q. Did you give out your cell phone number to people while you  
13 were at Olive Branch?

14 A. Yes.

15 Q. What was the name on the cell phone?

16 A. Andrew Owimrin.

17 Q. When you gave out your cell phone to people while you were  
18 working at A1, what was the name on the cell phone?

19 A. I actually might have switched over to my mother's name,  
20 Daphney Owimrin.

21 Q. Did you try to make your, I guess your identification  
22 restricted on your phone?

23 A. No.

24 Q. So that telephone number that came up, unless somebody put  
25 in a different name, the first time it would come up with

IB18KET4

Owimrin - Direct

1 Daphney Owimrin while you were at A1, is that right?

2 A. If they had caller ID, yes.

3 Q. When you were at Olive Branch, the name that would have  
4 came up, if they called that number, would have been Andrew  
5 Owimrin?

6 A. Correct, if they had caller ID.

7 Q. Now, why did you go with Arash to the other company?

8 A. For two reasons. One, the business was kind of slowing  
9 down at Olive Branch; we were struggling to get leads,  
10 processing. Arash and Bill had gotten into some type of  
11 disagreements that I didn't know about, didn't know what they  
12 were about, but they got into a disagreement. Arash decided he  
13 was going to start his own company, and he asked me and my  
14 cousin Reagan to go him. He was my cousin's fiance so I really  
15 didn't have a choice.

16 Q. Where was it located?

17 A. In his basement in their home, my cousin at his home.

18 Q. Was there an expectation that you were going to stay there  
19 or move?

20 A. We were going to move. He had plans on getting an office.  
21 It was just an in-between place that we were going to be until  
22 we got our feet on the ground.

23 Q. By the way, by the time that you left Olive Branch, did  
24 Olive Branch have more space than that one area that was  
25 discussed by Mr. Sinclair?

IB18KET4

Owimrin - Direct

1 A. Yes, much more.

2 Q. What else did they have?

3 A. They had an office across the hall that had two rooms in  
4 it, and they had a whole office space downstairs that had an  
5 office that was the size of basically the two offices upstairs,  
6 and then a basement that was a part of that.

7 Q. Do you know what was going on in the other offices?

8 A. Yes.

9 Q. What?

10 A. In the office upstairs that was across the hall was where  
11 we put the appointment setters because we had hired more sales  
12 reps, or they had hired more sales reps, so they put the  
13 appointment setters separate.

14 Then downstairs he opened up strictly an SEO floor,  
15 search engine optimization floor. It's like a Google floor;  
16 they were just selling people Google, SEL.

17 Q. Now, that sale, again, what was necessary for Connor to  
18 make a sale of those items?

19 MS. KEARNEY: Objection.

20 THE COURT: Sustained.

21 Q. What does the sale of the YouTube, social media package,  
22 SEO/SEM, and custom merchant Web site mean to you?

23 A. That means that she had a merchant processing business.

24 Q. Now, when you talked to customers, other than the first  
25 couple of weeks when you didn't have a phone, when you went for



IB18KET4

Owimrin - Direct

1 a sale initially, did you speak to them on an office phone or  
2 your cell phone?

3 A. My cell phone.

4 Q. When was that?

5 A. That was when we first moved from Olive Branch to Arash's  
6 basement.

7 Q. Why was that?

8 A. We didn't have phone systems set up yet.

9 Q. When the phone systems were set up, what did you do?

10 A. We used the office phones.

11 Q. Did you use your cell phone at some point?

12 A. Occasionally, yes.

13 Q. Did you give out your cell phone number to customers you  
14 thought that it would be helpful to have it?

15 A. If they asked for it, I would give them my cell phone  
16 number. I wouldn't just offer it, but if they asked, I would  
17 give it to them.

18 Q. Now, I ask you to take a look at 165, on page 8.

19 Do you remember talking to Ms. Thompson on that date?

20 A. Yes.

21 Q. Now, looking at these notes there, can you tell us what you  
22 talked to her about?

23 MS. KEARNEY: Objection.

24 MR. SCHMIDT: I will withdraw that question.

25 Q. Could you tell us what you talked to her about?

IB18KET4

Owimrin - Direct

1 A. I spoke about the products I sold her -- the LLC, business  
2 plan, corporate credit -- the first initial sale.

3 Q. Based on Exhibit SP4, which is the telephone chart, would  
4 it be fair to say that --

5 MS. KEARNEY: Objection.

6 THE COURT: Change the phrasing.

7 Go ahead.

8 Q. Do you remember if you talked to her with your cell phone  
9 or the office phone?

10 A. My cell phone.

11 Q. I ask you to look at SP4.

12 MS. KEARNEY: Objection. The witness has answered.

13 MR. SCHMIDT: He answered that question, but I have  
14 another question.

15 THE COURT: He can show him whatever he wants.

16 Go ahead.

17 Q. Do you see the chart of the telephone calls made with your  
18 cell phone?

19 A. Yes.

20 Q. Could you tell us if you spoke with Ms. Thompson on your  
21 cell phone or on your office phone?

22 A. My cell phone.

23 Q. Where is it listed there?

24 A. The first three 1/5/16 --

25 Q. We are talking about now --

IB18KET4

Owimrin - Direct

1 MR. SCHMIDT: Could we show page 9 of 165.

2 Q. You see the date on there?

3 A. December 17.

4 Q. On that date, do you recall whether you spoke to her on  
5 your cell phone or on your landline?

6 A. Landline.

7 Q. Were there times that you spoke with Ms. Thompson on your  
8 cell phone?

9 A. Yes.

10 Q. After that?

11 A. Yes.

12 Q. Now, you said you had communication with a person named  
13 Emily Miller, is that right?

14 A. Yes.

15 Q. Prior to going to A1, were you familiar with that name at  
16 all?

17 A. I was familiar with the name, yes.

18 Q. How were you familiar with that name?

19 A. We would see it in lead lists, in appointments; an  
20 appointment setter would just copy and paste whatever was in  
21 the lead list, and you would see the previous sales rep and  
22 previous company and you would see her name a lot.

23 Q. Did there come a time that you communicated with her on the  
24 telephone?

25 A. Yes.

IB18KET4

Owimrin - Direct

1 Q. How did that occur?

2 A. That happened through Arash when we moved into his basement  
3 to work for A1. She sent him over some leads and she had, I  
4 believe, either texted or called me to explain to me what those  
5 leads were, what they had purchased, and things of that nature.

6 Q. Now, after the sale that you made and the sale that Connor  
7 made to Jane Thompson, was there any other products that you  
8 knew of that was available to be sold to Jane Thompson?

9 A. No, sir.

10 Q. The products that you sold, at the time that you sold them  
11 to Jane Thompson, did you think that they were real?

12 A. Yes.

13 Q. Did you think they were fulfilled and being serviced?

14 A. Yes.

15 Q. The products that Connor sold to Ms. Thompson, did you  
16 think that they were real?

17 A. Yes.

18 Q. Did you think that they were being serviced?

19 A. Yes.

20 Q. Now, you did participate in other sales with Ms. Thompson,  
21 didn't you?

22 A. Correct.

23 Q. How did it come about, after the sales by you and Connor,  
24 that other sales happened?

25 A. Could you repeat that?

IB18KET4

Owimrin - Direct

1 Q. You previously just testified that you sold the products  
2 that you had to Ms. Thompson. But you also testified that you  
3 also were involved in later sales with Ms. Thompson?

4 A. Yes.

5 Q. So how did it come about, after you and Connor made those  
6 first two sales, that other sales occurred?

7 A. It was initiated by Arash Ketabchi and Emily Miller, they  
8 notified -- Emily basically notified that there were other  
9 products that we could sell.

10 Q. What was the product that Emily told you that was available  
11 to be sold?

12 A. A merchant processing business. I think it was a little  
13 different than merchants that I was aware of. That was the one  
14 that KB sold for \$50,000 prior to us getting her lead. But a  
15 merchant terminal.

16 Q. Had you sold anything like that before?

17 A. Never.

18 Q. Did you know much about that?

19 A. No.

20 Q. Did anyone explain that to you?

21 A. Yes.

22 Q. Who?

23 A. Emily Miller.

24 Q. Whose idea was it to sell Jane Thompson these merchant  
25 processing things?

IB18KET4

Owimrin - Direct

1 A. It was both Emily and Arash.

2 Q. Did you have an adequate understanding at the time that you  
3 participated --

4 MS. KEARNEY: Objection.

5 THE COURT: Sustained as to form.

6 Q. Did you believe that the merchant processing program, as  
7 explained to you by Emily and Shahram, was lawful?

8 MS. KEARNEY: Objection.

9 THE COURT: Just a moment.

10 MR. SCHMIDT: I apologize. Emily and Arash. I  
11 apologize.

12 MS. KEARNEY: Same objection.

13 THE COURT: Sustained as to form.

14 Q. What was your understanding about the legitimacy of the  
15 merchant processing program as explained to you by Arash and  
16 Emily?

17 A. I thought it was a legitimate business.

18 Q. Did you have any idea really how it ran?

19 A. No.

20 Q. Did you know how much the program would be sold for?

21 A. Not at that time, no.

22 Q. Did you learn what the prices were?

23 A. Yes.

24 Q. How did you learn about it?

25 A. They told me.

IB18KET4

Owimrin - Direct

1 Q. When you say "they," who do you mean?

2 A. Emily told me the prices. Arash didn't tell me that.

3 THE COURT: Your job was to sell what the company was  
4 selling, right?

5 THE WITNESS: Yes, sir.

6 THE COURT: I take it you never refused to sell a  
7 product of either Olive Branch or A1, did you?

8 THE WITNESS: No, sir. Unless I wasn't knowledgeable  
9 about it, then I would get assistance to do so.

10 Q. Now, I ask you to look at -- one moment.

11 (Continued on next page)

IB1JKET5

Owimrin - direct

1 THE COURT: Ladies and gentlemen, why don't we stand  
2 up and stretch and take a break. We're doing that primarily  
3 because I felt the need to stretch.

4 (Pause)

5 THE COURT: All right. Thank you. Next question.

6 BY MR. SCHMIDT:

7 Q. You testified that you did speak with Ms. Thompson on your  
8 cell phone on January 5th. Is that right?

9 A. Yes.

10 Q. Now, do you remember who you spoke to before you had that  
11 conversation?

12 A. Yes.

13 Q. With Jane Thompson on the 5th?

14 A. Yes, I remember.

15 Q. Who was the person that you talked to?

16 A. Emily Miller.

17 Q. What was the conversation about that you talked to Emily  
18 Miller?

19 A. She was giving me a brief summary, a rundown of what  
20 products to talk about and things like that.

21 Q. So were you planning on then, after speaking to Ms. Miller,  
22 to speak to Ms. Thompson?

23 MS. KEARNEY: Objection.

24 MR. SCHMIDT: I'll withdraw that question.

25 BY MR. SCHMIDT:



IB1JKET5

Owimrin - direct

1 Q. Now, did you call Ms. Thompson and try to sell a product to  
2 her?

3 MS. KEARNEY: Objection.

4 THE COURT: I'll allow it.

5 A. Yes.

6 Q. Do you remember what the product was?

7 A. Yes.

8 Q. What was it?

9 A. It was a merchant terminal.

10 Q. How did that conversation go?

11 A. Pretty bad.

12 Q. Can we put up 474, please.

13 (Off-the-record discussion)

14 MR. SCHMIDT: 475.

15 Q. Now, do you see that email?

16 A. Yes.

17 Q. Did you have a conversation after your not so good attempt  
18 with Jane Thompson with Emily Miller?

19 A. Not right away, no.

20 Q. Now, I ask you to take a look at the marked SP-2. I am  
21 handing this to you.

22 A. Thank you.

23 Q. Did you have a number of conversations with Emily Miller on  
24 the 5th, 6th, and 7th of January?

25 A. Yes.

IB1JKET5

Owimrin - direct

1 Q. Do you recall what those conversations were about?

2 A. They were about other leads, they were about Jane Thompson,  
3 about merchant processing, things like that.

4 Q. Now, did you have other conversations with Jane Thompson  
5 after that?

6 A. Yes.

7 Q. Now, I ask you to take a look at 165, Page 19.

8 A. Okay.

9 Q. Did you have a conversation with Ms. Thompson about that  
10 time?

11 A. Yes.

12 Q. What was the conversation about?

13 A. It was about getting a merchant terminal up and running.

14 Q. Were you a little bit -- how were you at that time in  
15 discussing the merchant processing?

16 THE COURT: Sustained.

17 Q. How comfortable were you discussing merchant processing  
18 with Ms. Thompson at that time?

19 A. Not very comfortable.

20 Q. Was this a conversation in which Emily participated in?

21 A. Yes, sir.

22 Q. Who did most of the talking about the actual merchant  
23 processing?

24 A. Emily.

25 Q. Now, between you, Jane Thompson and Emily Miller, who

IB1JKET5

Owimrin - direct

1       seemed to be the least informed about merchant process?

2               MS. KEARNEY:  Objection.

3               THE COURT:  Sustained.

4       Q.  Do you recall who talked the least about the merchant  
5       processing in that conversation?

6       A.  Me.

7       Q.  Now I ask you to take a look at Page 22.

8               THE COURT:  I take it that is because Emily was doing  
9       the sale, right?

10              THE WITNESS:  Yes.

11      Q.  Did Jane Thompson seem knowledgeable about merchant  
12      processing?

13      A.  Yes, she did.

14              THE COURT:  Jane Thompson appeared to be knowledgeable  
15      to you about the merchant processing process.  Is that your  
16      testimony?

17              THE WITNESS:  Yes.

18              THE COURT:  All right.

19      BY MR. SCHMIDT:

20      Q.  Actually, have you reviewed with us --

21      A.  I should say more knowledgeable than myself.

22              THE COURT:  No, that is not what I was asking.

23      Q.  Did she seem more knowledgeable than Emily?

24      A.  No.

25      Q.  I ask you to look at --

IB1JKET5

Owimrin - direct

1 THE COURT: Let me ask you another way because I want  
2 to make sure your testimony is clear to the jury.

3 Is it your testimony that in that conversation you  
4 came to the conclusion that Jane Thompson understood what  
5 merchant processing was about?

6 THE WITNESS: Yes.

7 THE COURT: Did you believe -- next.

8 BY MR. SCHMIDT:

9 Q. Did you come to the conclusion that Jane Thompson  
10 understood what merchant processing was from earlier  
11 conversations?

12 A. Yes.

13 Q. Now I show you Page 22 of Government Exhibit 165. Now,  
14 were you a participant in that conversation?

15 A. Yes.

16 Q. Where would you rank yourself in the frequency of you  
17 talking in that conversation among those four people -- excuse  
18 me -- yes, the four people?

19 A. Three other than myself, at the bottom.

20 Q. Now, by the end of this conversation what was your  
21 understanding as to the next product that would be sold or  
22 attempted to be sold to Jane Thompson?

23 A. Merchant, more merchant processors.

24 Q. How many?

25 A. Three of them.

IB1JKET5

Owimrin - direct

1 Q. By this time, did you have an idea of what the costs would  
2 be for the merchant processing program?

3 A. \$50,000, judging by the initial \$50,000 sale from KB.

4 Q. You understand whether she -- was it your understanding at  
5 some point she was offered a merchant processing site for less  
6 than \$50,000?

7 A. The site itself is different than the actual -- the site  
8 would be a separate entity.

9 Q. I ask you to take a look at Page 31 of the same exhibit.  
10 Did you speak with Ms. Thompson on that day?

11 A. Yes.

12 Q. What was your conversation with Ms. Thompson about?

13 A. The terminals were beginning to write the check out of, you  
14 know, things like that.

15 Q. After you had a conversation about the terminals, did you  
16 give the phone to someone?

17 A. Yes.

18 Q. Who did it give it to?

19 A. To Zack Peterson.

20 Q. Did you participate in the conversation that appears to be  
21 reflected in the paragraph with the asterisk?

22 A. No, sir.

23 Q. Did you learn about that conversation?

24 A. I did.

25 Q. Who did you learn about that conversation from?

IB1JKET5

Owimrin - direct

1 A. From Arash.

2 Q. At the time were you getting paid the commissions for sales  
3 at A1?

4 A. Yes.

5 Q. Was Reagan getting paid?

6 A. Yes.

7 Q. Do you recall if someone else, any other salespeople were  
8 working at that time?

9 A. Yes.

10 Q. Who else was working there?

11 A. There was another sales rep, Louis, had other business  
12 partners and there was two, a private centers compliance  
13 rep/secretaries that worked there also.

14 Q. At that point did you have, did you have an understanding  
15 about the costs related to a sale, including the lead,  
16 fulfillment and the merchant account?

17 A. No.

18 Q. To your knowledge, did you understand that A1 was making  
19 money?

20 A. Yes.

21 Q. Were you making money?

22 A. I was.

23 Q. Did you know what 20 percent of the residuals after  
24 everything was paid from A1 would be?

25 A. No.

IB1JKET5

Owimrin - direct

1 Q. Why is that?

2 A. Because I don't know, that wasn't my -- I didn't keep track  
3 of all the finances. It wasn't my business.

4 Q. Now, did you have conversations with Ms. Thompson other  
5 than conversations specifically about the things that you sold?

6 A. Yes.

7 Q. What kind of conversations did you have?

8 A. Things about life, just talking about regular, everyday  
9 life issues, you know, she was going through, issues I was  
10 going through in my personal life, things like that. We  
11 talked.

12 Q. What did you think about Jane Thompson as a person?

13 A. I thought she was a sweetheart.

14 Q. How do you feel now what you've seen what has happened to  
15 Jane Thompson?

16 A. I feel like, I feel horrible, honestly. I can't really put  
17 it into words, honestly.

18 Q. Were you aware that Jane Thompson continued to give money  
19 to Emily Miller after these last deals?

20 A. No.

21 Q. Did you learn Emily Miller's real name at some point?

22 A. Yes.

23 Q. What is her real name?

24 A. Brooke Marcus.

25 Q. Did there come a point while you were still working for

IB1JKET5

Owimrin - direct

1 Arash Ketabchi that you were forwarding leads to Bill Sinclair?

2 A. Yes.

3 Q. During the time that you were working for Arash, had you  
4 seen Bill or other people work there on and off?

5 A. I used to go up to Bill's offices, yes.

6 Q. Was there any kind of reason that what you were doing in  
7 Bill's office?

8 A. I would go get drugs from him, Mike Finocchiaro and I would  
9 meet Anthony Medeiros sometimes, too.

10 Q. Did there come a time where you had a conversation with  
11 either Bill or Mike about going back to work with them?

12 A. Yes.

13 Q. Did you have a conversation with them about helping them  
14 with leads?

15 A. Yes, I did.

16 Q. What was your understanding at that time, when you had that  
17 conversation with them, what they were selling at that time?

18 A. They were selling debt consolidation basically.

19 Q. Did there come a time you forwarded debt leads to them?

20 A. Yes.

21 Q. Did you get paid at any time?

22 A. Yes.

23 Q. What did you get paid?

24 A. It is hard for me getting my job back for that or beginning  
25 a job. He gave me a thousand dollars. I wasn't making money



IB1JKET5

Owimrin - direct

1 at the time at Arash's. He gave me a thousand dollars cash  
2 spending money until to live until I got on my feet and started  
3 making sales.

4 Q. When you first started working at Olive Branch, where did  
5 you live?

6 A. I lived in Cliffside Park.

7 Q. Did you live with anybody?

8 A. I lived with my parents.

9 Q. At some point while you you were working at Olive Branch,  
10 did you get your own apartment?

11 A. Well before.

12 Q. Did you share your own apartment?

13 A. Before that, I moved in with my brother. We ended up  
14 getting -- having to move. I moved in with my brother. I  
15 stayed there for a little bit while was working with Olive  
16 Branch. I did eventually get my own apartment.

17 Q. What happened to that apartment?

18 A. I got evicted.

19 Q. Why did you get evicted?

20 A. I was not paying my rent.

21 Q. How much before going into rehab in 2000, spring-summer of  
22 2016 did you get evicted from your apartment?

23 A. Can you repeat that? I am sorry.

24 Q. How much before you went into rehab the second time did you  
25 get evicted from your apartment?

IB1JKET5

Owimrin - direct

1 A. Again.

2 Q. You saw the evidence, put in evidence of your bank accounts  
3 through March, if I am not mistaken of 2016. What happened to  
4 your bank account?

5 A. They were all delinquent. They were in the negative and  
6 they all pretty much got checked out, but if they weren't being  
7 checked out, they just weren't being used.

8 Q. When you went back to Olive Branch, what were you selling  
9 at that time?

10 A. It was Consumer Shield at that time when I went back and we  
11 were selling debt consolidation.

12 MR. SCHMIDT: I would like to play some audio.

13 MS. KEARNEY: What exhibit is this?

14 MR. SCHMIDT: 122.

15 (Audio played)

16 BY MR. SCHMIDT:

17 Q. Now, would you tell us what that conversation was about.

18 A. Yes.

19 Q. What was it about?

20 A. We had gotten \$40,000 in sales the week prior, but we  
21 didn't have processing at that time to actually run the  
22 charges. Arash had found, he had found a merchant processing  
23 company. He had told that merchant processor that following  
24 week that we have signed contracts with these clients already,  
25 we are expecting to put through the \$40,000 in sales that week

IB1JKET5

Owimrin - direct

1 we got the week before.

2 We were having trouble contacting some of these  
3 clients, so he was passing whatever I could tell him, he said  
4 we have \$40,000, we have signed contracts and we don't. I  
5 basically told him we don't have control over these people. If  
6 they spoke to somebody else, they may not want to work with us,  
7 work with somebody else. That is basically what I was telling  
8 him.

9 (Audio played)

10 BY MR. SCHMIDT:

11 Q. Now, you had a conversation with Charlene about selling her  
12 private debt?

13 A. Yes.

14 Q. What did you understand Arash Ketabchi meaning was  
15 dangerous?

16 A. Because putting one charge on one card on one account  
17 merchant account, if they decided to charge-back or cancel  
18 even, it could ruin the merchant account with a charge that  
19 high.

20 Q. How did you respond to that?

21 A. I told them that we could break it up into separate  
22 charges.

23 Q. What did you tell him about the conversation that you had  
24 with Charlene?

25 A. I told her that -- I spoke to her. She initially thought

IB1JKET5

Owimrin - direct

1 that she had invested \$25,000 with Elite for the services. I  
2 actually ended upselling her.

3 She was under the impression that she did, but they  
4 never charged her. They actually refunded her for some reason.  
5 I explained to her that we're going to be the same services  
6 except it would be for \$5,000.00 less. Instead of 25,000, we  
7 would do it for 20,000.

8 Q. You heard Bill Sinclair testify about what he claims you  
9 said to him about what happened with Jane Thompson.

10 Now, at the time that you ended all your relationship  
11 with Jane Thompson, did you believe that she was a victim of a  
12 scam?

13 A. No, not at that time.

14 Q. Now, part of the contract that she had, she was supposed to  
15 get money from A1, 20 percent?

16 A. Correct.

17 Q. Did you learn whether she ever got any money from A1?

18 A. No.

19 Q. Did you learn whether A1, indeed, was using its own  
20 merchant account by the time that you went back to Bill  
21 Sinclair?

22 A. They weren't using their own merchant account.

23 Q. By the time that you went back to Bill Sinclair, did you  
24 think that Arash and Emily Miller did, indeed, rip her off at  
25 least for that part about being a partner?

IB1JKET5

Owimrin - cross

1 A. With that part, I was questioning it.

2 Q. Did you get paid from Arash for a commission for the sales  
3 to Ms. Thompson?

4 A. Yes.

5 Q. Did you laugh about what happened to Ms. Thompson?

6 A. No.

7 Q. Have you learned anything in this past year and a half in  
8 this case by going through documents?

9 MS. KEARNEY: Objection.

10 MR. SCHMIDT: I have no further questions.

11 THE COURT: Thank you. Is there cross-examination?

12 MS. KEARNEY: Yes. Thank you.

13 THE COURT: All right. I am sorry. Is there anything  
14 from --

15 MR. PAUL: We'll go afterwards, but I will go now  
16 because I only have a few questions.

17 THE COURT: Let's do that.

18 MS. KEARNEY: That is fine.

19 CROSS EXAMINATION

20 BY MR. PAUL:

21 Q. Good afternoon, Mr. Owimrin.

22 A. Good afternoon.

23 Q. You were asked some questions with regard to at least one  
24 phone conversation that popped up on one of the charts that was  
25 connected to Steven Ketabchi's phone. Do you remember that?

IB1JKET5

Owimrin - cross

1 A. Yes.

2 Q. Approximately, if you can estimate, how many times did you  
3 communicate with Steven Ketabchi during the time of your  
4 employment at either Olive Branch or A1?

5 A. None at Olive Branch, and maybe at most 10 times at A1 at  
6 most.

7 Q. If you can tell us, what would be the purpose of any of  
8 those conversations or what did those conversations pertain to  
9 when you spoke to Steven Ketabchi?

10 A. Primarily they're about me Fed Ex-ing personal documents of  
11 Arash's to Shahram.

12 Q. What kind of personal documents?

13 A. Tax stuff, tax information, also I know he, from what I  
14 understand, was sending gift baskets out to clients.

15 Q. Did you have any understanding with regard to Steven  
16 Ketabchi's role concerning charge-backs?

17 A. No.

18 Q. What was the role that, as best you can tell us, the role  
19 that Mike Finocchiaro had at the office at Olive Branch?

20 A. He was in charge of charge-backs.

21 Q. What about Sinclair?

22 A. To an extent, he was also in charge of charge-backs. He  
23 was the owner of the company. They both were.

24 Q. You testified that you reached out to a number of customers  
25 during the course of your selling both at Olive Branch and A1.

IB1JKET5

Owimrin - cross

1           During the time you were employed at A1, did you reach  
2 out to customers who were happy with their purchases?

3 A. Yes.

4 Q. How would they portray that to you in terms of your  
5 conversations with them?

6 MS. KEARNEY: Objection.

7 THE COURT: Sustained as to form.

8 BY MR. PAUL:

9 Q. How did you come to conclude that customers you spoke to  
10 were happy with their purchases?

11 A. They were excited. They were thanking for the gift basket  
12 and they were excited to be a part of the company.

13 Q. You told us that -- could you estimate, if possible, the  
14 percentage of customers you spoke to who were happy with the  
15 products they were purchasing?

16 A. I would say like 50 percent.

17 THE COURT: I take it that the gift baskets were given  
18 shortly after the sale was made?

19 THE WITNESS: Yes, it was part of the welcoming call.

20 THE COURT: So they're indicating -- I don't want to  
21 put words in your mouth -- were they indicating their  
22 excitement about joining the team and thanking you for the gift  
23 basket?

24 THE WITNESS: Yes.

25 THE COURT: Shortly after joining the team and

IB1JKET5

Owimrin - cross

1 receiving the goodies?

2 THE WITNESS: Yes.

3 THE COURT: All right.

4 BY MR. PAUL:

5 Q. You testified you spoke to Steven Ketabchi with regard to  
6 his tasks on behalf of his brother, Arash Ketabchi's personal  
7 effects and things like that. Is that right?

8 A. Correct.

9 Q. Had you ever met Steven Ketabchi?

10 A. No, sir.

11 Q. Had you ever met his sister, Mona Ketabchi?

12 A. Yes, I did.

13 Q. What would be the circumstances of your having met Mona  
14 Ketabchi?

15 A. Me and Arash and Reagan were in Las Vegas, and she ended up  
16 showing up to surprise Arash. She was in Las Vegas as well.

17 Q. Was Steven in Las Vegas at that time as well?

18 A. No, sir.

19 MR. PAUL: Nothing further.

20 THE COURT: Thank you. Cross-examination.

21 MS. KEARNEY: Thank you.

22 THE COURT: Do you have an estimate of the length of  
23 your cross-examination?

24 MS. KEARNEY: I don't, your Honor.

25 THE COURT: All right.



IB1JKET5

Owimrin - cross

1 CROSS EXAMINATION

2 BY MS. KEARNEY:

3 Q. Mr. Owimrin, you testified about your time at Olive Branch  
4 and then at A1 Business Consultants. Do you remember that?

5 A. Yes.

6 Q. And you were at Olive Branch, you said, from maybe March or  
7 April 2014 through September 2015. Is that right?

8 A. Correct.

9 Q. So that's 18 months, maybe?

10 A. Yes.

11 Q. When you started out, you were pretty new, right? You  
12 didn't know what you were doing?

13 A. Yes.

14 Q. You listened to some people make some calls, right?

15 A. Correct.

16 Q. You listened to Arash, right?

17 A. Occasionally.

18 Q. That was one of the people that Bill suggested you listen  
19 to, right?

20 A. It was one of the six.

21 Q. He was your manager, right?

22 A. He was the manager, yes.

23 Q. Your manager?

24 A. Yes.

25 Q. Right, and so he presumably he had been there for a long

IB1JKET5

Owimrin - cross

1 time, right?

2 A. Yes, and some of the other reps.

3 Q. And Arash knew what he was doing, right?

4 A. As most people on the floor, yes.

5 Q. And Arash made a lot of sales, right?

6 A. He was the sales manager, so, yes.

7 Q. Where would you rank him?

8 A. Like as a sales rep?

9 Q. You were here when Mr. Sinclair testified about the tiers.

10 Where would you rank Arash?

11 A. In terms of production, he was up there.

12 Q. So that means he made a lot of sales, right?

13 A. Correct.

14 Q. Okay. So you listened to some other folks at Olive Branch,  
15 right?

16 A. Yes.

17 Q. And you learned about the various products that they were  
18 offering?

19 A. Correct.

20 Q. And that was the LLCs, right?

21 A. Yes.

22 Q. And the business plans?

23 A. Correct.

24 Q. Corp. Credit?

25 A. Corp. Credit Coaching, yes.

IB1JKET5

Owimrin - cross

1 Q. Would you explain to us what Corporate Credit coaching is.

2 A. Not in great detail, but basically corporate coaching to me  
3 would be a Corporate Credit coach would work on helping you  
4 establish business lines of credit.

5 Q. A Corporate Credit coach coaches you in corporate credit.  
6 Is that right?

7 A. They help you establish corporate lines of credit. They  
8 don't coach you. It is like a training.

9 Q. Is that the description you would give to a customer on the  
10 phone who asked you what Corporate Credit was?

11 A. No. I had a description in front of me I could read from.

12 Q. But you don't remember that now?

13 A. No.

14 Q. Some other products that you offered were tax services,  
15 that's right?

16 A. Yes.

17 Q. You talked about Youngevity, right?

18 A. Correct.

19 Q. And that was just kind of the buffet of options you could  
20 offer to people that you called on the phone?

21 A. It was one of the options.

22 Q. Now, when you called people when you were working at Olive  
23 Branch, you told them your name was Andrew Owens. Is that  
24 right?

25 A. Correct.

IB1JKET5

Owimrin - cross

1 Q. Who is Zack Peterson?

2 A. Arash Ketabchi.

3 Q. You told us that Connor Swanson, that was your cousin  
4 Reagan Owimrin?

5 A. Yes, that was Reagan.

6 Q. Who is Sophia?

7 A. She was an appointment setter.

8 Q. What was her real name?

9 A. Lissette, I think.

10 THE COURT: Lissette?

11 THE WITNESS: L I S S E T T E, I believe.

12 BY MS. KEARNEY:

13 Q. And Emily Miller, you told us her real name was Brooke  
14 Marcus, right?

15 A. Correct.

16 Q. How did you learn that?

17 A. From when she started giving Arash leads when we were  
18 working for A1. I actually didn't even learn it right away,  
19 but I learned it through Arash, Arash told me what her name  
20 was.

21 Q. Brooke Marcus went by Emily Miller. Is that right?

22 A. As I know it, yes.

23 Q. And now when you were at Olive Branch, you eventually  
24 figured out what you were doing, right?

25 A. Somewhat.

IB1JKET5

Owimrin - cross

1 Q. You were able to make some sales?

2 A. I was.

3 Q. And the bulk of the sales, I think you told us, were LLCs,  
4 right?

5 A. LLC, business plan, corporate credit, correct.

6 Q. Primarily LLCs because that is what you felt comfortable  
7 pitching on the phone, right?

8 MR. SCHMIDT: Objection, your Honor; misstates his  
9 testimony.

10 THE COURT: It is cross. I'll allow it.

11 BY MS. KEARNEY:

12 Q. Mr. Owimrin, do you remember telling us you primarily sold  
13 LLCs because you were most comfortable with that product?

14 A. I was most comfortable with that product, yes.

15 Q. You primarily sold LLCs because that is what you were most  
16 comfortable pitching on the phone, correct?

17 A. It was part of the packages I was selling, yes.

18 Q. Was it primarily the product you sold or just a part of the  
19 package?

20 A. I would sell the LLCs along with business plan, Corporate  
21 Credit typically.

22 Q. When you told us primarily you sold LLCs because that is  
23 what you were most comfortable with, did you just --

24 MR. SCHMIDT: Objection, your Honor.

25 THE COURT: Just a moment. Let her finish.

IB1JKET5

Owimrin - cross

1 Did you just sell the LLCs, or when you sold the LLCs,  
2 were they part of a package?

3 THE WITNESS: Both, they were both. I would sell both  
4 on their own and as well as part of a package, yeah.

5 BY MS. KEARNEY:

6 Q. So you eventually were able to make some sales, right?

7 A. Yes.

8 Q. After that first disastrous call you told us about?

9 A. Correct.

10 Q. And you called Jo Ann La Morte, right?

11 A. I did.

12 Q. You heard her testify at this trial?

13 A. Yes.

14 Q. And you sold her in July 2015 a \$8500.00 starter kit,  
15 right?

16 A. Youngevity.

17 Q. And when you called her, you told her your name was Andrew  
18 Owens, right?

19 A. Correct.

20 Q. You also sold products to Diane Weissenberger, right?

21 A. Correct.

22 Q. Multiple times?

23 A. Correct.

24 Q. So you sold products to her on September 17, 2015, right?

25 A. Yes.

IB1JKET5

Owimrin - cross

1 Q. Do you remember seeing that phone chart where there was no  
2 entry for September 17th, 2015 for your cell phone?

3 A. I don't remember off the top of my head, no.

4 Q. I think it was Defense Exhibit SP-5. Could you go to the  
5 last page, please.

6 So there is a sale on September 17th, 2015, but there  
7 is no call from your cell phone. Is that right?

8 A. Correct.

9 Q. Was that because you called her from your office phone?

10 A. Yes, I think that would be.

11 Q. You also spoke to her on September 25th, right, 2015?

12 A. I can't remember off the top of my head.

13 Q. Ms. Lee, could you please put up Government Exhibit 503.

14 A. Yes.

15 Q. That is an appointment with Diane Weissenberger, right?

16 A. Correct.

17 Q. As you spoke to her on September 25th, 2015, right?

18 A. Ah-huh.

19 Q. At 11:00 am?

20 A. Yes.

21 Q. Right there it says signed COS. That means Continuation of  
22 Service, right?

23 A. Yes.

24 Q. At that point she had already tried to charge back the  
25 previous sale that you made just a week earlier?

IB1JKET5

Owimrin - cross

1 A. Correct.

2 Q. And someone had talked her into not doing that?

3 A. To not signing the COS?

4 Q. Not charging back that sale?

5 A. Yes.

6 Q. You called her again on October 7th, right?

7 A. Also September 25.

8 Q. Also October 7th, right?

9 A. Yes. That is what is listed here.

10 Q. Ms. Lee, could you put up Government Exhibit 154.

11 So this is a refund authorization form for Diane  
12 Weissenberger, right?

13 A. Yes.

14 Q. That is dated September 18th, 2015. That is one day after  
15 you had sold her on September 17th, right?

16 A. Correct.

17 Q. So she tried to refund one day after you sold to her?

18 A. Yes.

19 Q. Then you called her again on September 25th, 2015?

20 A. I did.

21 Q. And again on October 7th, 2015?

22 A. Yes.

23 Q. And on October 7th, you entered a \$15,000 contract with  
24 her, right?

25 A. Correct.



IB1JKET5

Owimrin - cross

1 Q. When you first spoke to her on September 17th, you told her  
2 your name was Andrew Owens, right?

3 A. When I was at Olive Branch, yes.

4 Q. Who is Doug Nielsen?

5 A. That is Reagan.

6 Q. He used a couple of different names?

7 A. When we switched companies, he switched names, as I stated.

8 Q. He is Connor Swanson of A1, but Doug Nielsen of Olive  
9 Branch?

10 A. Correct.

11 Q. You said on direct testimony that you only used Andrew  
12 Owens and Jonathan Stewart when you were making sales.

13 Did you use other names when you were doing other  
14 things?

15 A. No.

16 Q. So then on October 7th, 2015, you're at A1 now working for  
17 the Arash, right?

18 A. Yes.

19 Q. You called Diane Weissenberger again?

20 A. What was that date?

21 Q. October 7th, 2015?

22 A. Yes.

23 Q. This time you tell her your name is Jonathan Stewart,  
24 right?

25 A. Correct.

IB1JKET5

Owimrin - cross

1 Q. Do you tell her she was talking to the same person?

2 A. No.

3 Q. You also testified about your calls to Charlene Foster. Do  
4 you remember that?

5 A. Yes.

6 Q. You said that you sold Charlene Foster the Youngevity  
7 contracts, right?

8 A. Yes, as per contract.

9 Q. You looked at one of those long contracts?

10 A. Yes.

11 Q. That includes like the starter website and --

12 A. Yes, ma'am.

13 Q. And after that, you called her again, right, from A1?

14 A. I really don't remember off the top of my head right now.

15 Q. Let's look at Government Exhibit 1205. Ms. Lee, can you  
16 please zoom in on the top. This is a contract with Charlene  
17 Foster, right?

18 A. Ah-huh.

19 Q. With A1 Business Consultants, right?

20 A. Correct.

21 Q. It is dated October 15th, 2015?

22 A. Correct.

23 Q. And look at the products and services, are those the  
24 Youngevity products?

25 A. No those are LLCs, Business Plan, Corporate Credit, tax

IB1JKET5

Owimrin - cross

1 preparation as well as a --

2 Q. You sold her Corp. Credit, LLC?

3 A. Yes.

4 Q. You sold her a business plan?

5 A. Correct.

6 Q. You sold her Corp. Credit again?

7 A. Correct.

8 Q. You sold her Corporate tax prep?

9 A. I don't know if I sold her Corporate Credit previously.

10 Q. You gave her a laptop?

11 A. Yes.

12 Q. And that is because she had told you she didn't have one,  
13 right?

14 A. She said she didn't have a laptop, and we asked if she  
15 wanted one, and she said sure.

16 Q. That contract is for \$20,000, right?

17 A. That's what it says, yes.

18 Q. When you talked to Charlene Foster on October 15th, you  
19 told her your name was Jonathan Stewart?

20 A. Correct.

21 Q. What name did you give her when you spoke to her about  
22 Youngevity?

23 A. When I was working at Olive Branch, it was a different  
24 company, I gave her Andrew Owens.

25 Q. When you spoke with Charlene Foster, is it your impression

IB1JKET5

Owimrin - cross

1 that she understood the Youngevity business?

2 A. Yes, she understood what we were talking about.

3 Q. She understood it involved marketing, right?

4 A. She understood that fulfillment team would do the marketing  
5 for her.

6 Q. Help making sales? You can't make money from Youngevity  
7 unless there is some sales, right?

8 A. She didn't have to physically make the sales.

9 Q. If she didn't make sales to make money, people would have  
10 to come in under her, right?

11 A. Or her, she could have been selling perhaps on her website.

12 Q. On her website? Got it!

13 A. Yes.

14 Q. So when you spoke to her about it, you felt she understood  
15 the mechanics of this pyramid, as you described it?

16 A. Bill described it that way and, yes.

17 Q. Bill described it to you or to her?

18 A. He described it in this courtroom.

19 Q. You sold Youngevity, right? It is a pyramid?

20 A. I didn't look at it like that at the time. Now I see it  
21 was a pyramid, but at the time I was selling her Youngevity.

22 Q. And Youngevity involves marketing things to other people  
23 and selling things through a website and bringing other people  
24 in under you, right?

25 A. Correct.

IB1JKET5

Owimrin - cross

1 Q. So when you spoke with Ms. Foster, it is your sense she  
2 understood all of that prior to this upsell?

3 A. Yes. Well, technically this isn't an upsell. It is a  
4 different company.

5 Q. You can upsell from one company to another, right? That is  
6 what A1 does with a lead, right?

7 A. That is not the way I looked at it, but I guess, yes, you  
8 are right.

9 Q. So you're taking a sale made by one company, right?

10 A. Yes.

11 Q. And you are adding on products on top of that sale, right?

12 A. Correct. Sorry.

13 Q. Mr. Owimrin, were you in this courtroom when you saw the  
14 video of Charlene Foster?

15 A. Yes.

16 Q. Do you think she understood what the Youngevity program  
17 was?

18 MR. SCHMIDT: Objection, your Honor. We are talking  
19 about almost four-year difference.

20 THE COURT: It is cross. You can redirect.

21 A. In that video, it seems like she didn't know.

22 BY MS. KEARNEY:

23 Q. You testified a lot about Jane Thompson.

24 You testified that you initially spoke to her about  
25 \$19,000, right?

IB1JKET5

Owimrin - cross

1 A. Yes.

2 Q. And that was the corporate setup?

3 A. Yes.

4 Q. And the business plan?

5 A. Yes, the same thing.

6 Q. Corporate tax, right? Tax prep?

7 A. Yes.

8 Q. Tax plan?

9 A. Yes, I believe so.

10 Q. And that was to help her with the \$50,000 that you knew she  
11 had spent with First Trend or Elite, right?

12 A. With the emerging processing business she invested into, as  
13 I thought at that time.

14 Q. Right, as you thought, okay.

15 And then a week or so later you and Reagan sold her  
16 this search engine optimization, right?

17 A. Reagan did.

18 Q. Reagan did that?

19 A. And --

20 Q. And you split the profit with him, right?

21 A. We split everything in A1.

22 Q. What was your commission at A1?

23 A. 10 percent.

24 Q. So the two of you would each get 5 percent of everything?

25 A. No. It was 20 percent of the split would be 10 percent, so

IB1JKET5

Owimrin - cross

1 I would receive my commission off that would be 10 percent.

2 Q. So off that \$19,000 sale, you got \$1900?

3 You're smiling?

4 A. I am trying to do the math in my head, that's why. Yes, I  
5 believe so. Sorry.

6 Q. Off Reagan's \$9,995.00 sale, you got --

7 THE COURT: No.

8 Q. I am sorry. You got 900 -- now I am smiling.

9 You got \$9995.00?

10 A. No. I got \$500.00, I believe. 10 percent of 10,000 would  
11 be a thousand, right?

12 Q. Right, but you got 10 percent of a thousand?

13 A. Yes, you're right. Sorry. Now I see.

14 Q. But, in fact, Ms. Thompson spent more than \$99,995.00 on  
15 that sale --

16 THE COURT: No. You are --

17 MS. KEARNEY: It is numbers, your Honor.

18 BY MS. KEARNEY:

19 Q. \$9,995.00, she spent more than that, right?

20 A. Not on that initial sale, but previously, yes.

21 Q. Didn't she spend \$149,995.00 and put part of it on a credit  
22 card?

23 A. Not that I can remember. I don't recall.

24 Q. You didn't ask her to split up the two?

25 A. I don't remember. I don't think so, not -- you're talking

IB1JKET5

Owimrin - cross

1 about Jane?

2 Q. Ms. Thompson, yes.

3 A. No, I don't believe so. I don't remember. I believe I  
4 don't. Sorry.

5 Q. You talked to Jane frequently, right?

6 A. Later on, yes.

7 Q. You were on a first-name basis with her?

8 A. I would say so.

9 Q. That is why you're calling her "Jane" now?

10 A. It is just what came out now. There is no special reason.

11 Q. And she was an eager customer, right?

12 A. I wouldn't say, "eager."

13 Q. She had a lot of questions, though, right?

14 A. I didn't hear a lot of questions from her.

15 Q. You didn't ask her a lot of questions?

16 A. Not a lot.

17 Q. She seemed very interested in her business?

18 A. She was excited.

19 Q. And she talked to you about it a lot?

20 A. Alongside a lot of things, yes.

21 Q. So when it came time to sell her \$20,000 in these merchant  
22 processing terminals that you talked about, you thought that  
23 would be a good opportunity for her, right?

24 A. Yeah, I did, I did.

25 Q. You thought she really understood what these terminals



IB1JKET5

Owimrin - cross

1 were, right?

2 A. I said she had a better idea what they were than I did. I  
3 don't know about how much she understood, but she seemed pretty  
4 knowledgeable.

5 Q. But you yourself, you weren't really that comfortable  
6 pitching them, right?

7 A. I tried and I didn't --

8 Q. You didn't really understand what it was?

9 A. I had no idea what it was. I don't know the details.

10 Q. You were on the phone with Ms. Thompson, right, and you  
11 were trying to explain some of the details to her, right?

12 A. I was trying to.

13 Q. Then again, she made a second purchase, right, a \$30,000  
14 purchase?

15 A. With Brook Marcus. I am sorry.

16 THE COURT: Brook Marcus ended up pitching her?

17 THE WITNESS: Pitching her, yes.

18 BY MS. KEARNEY:

19 Q. Were you on the call?

20 A. I was on the call.

21 Q. Did you participate?

22 A. No. I listened.

23 Q. You sat there silently?

24 A. Pretty much, yes.

25 Q. You sat there silently while Brooke Marcus pitched Jane

IB1JKET5

Owimrin - cross

1 Thompson?

2 A. Yes.

3 Q. Did you talk to Arash about that?

4 A. (Inaudible).

5 Q. What?

6 A. Could I could learn the merchant processing pitch.

7 Q. You heard some testimony earlier, and I think you testified  
8 as well that when you get a lead from a lead source, there is a  
9 payment to that lead source, right? It is not for free?

10 A. Correct.

11 Q. So when you received Jane Thompson from First Trend, from  
12 Emily Miller, First Trend got paid for that, right?

13 A. I would assume so. I wouldn't know.

14 Q. In fact, you yourself paid Emily Miller for that lead,  
15 right?

16 A. No.

17 Q. You didn't deposit a thousand dollars into her bank  
18 account?

19 A. No.

20 Q. Isn't that how you learned what her real name was?

21 A. No.

22 Q. Did you get commission on the merchant terminal sales?

23 A. Yes.

24 Q. How much?

25 A. 10 percent.

IB1JKET5

Owimrin - cross

1 Q. 10 percent of each?

2 A. From what she signed up with us, yes, not the prior ones.

3 The prior one --

4 Q. The 10 percent of 20,000, right?

5 A. Yes.

6 Q. 10 percent of 30,000, right?

7 A. Correct, 5,000.

8 Q. You talked about this partnership interest when you were on  
9 the phone and Jane Thompson learned about that, right?

10 A. Yes.

11 Q. Your testimony was you were not on the phone when Jane  
12 Thompson learned about the partnership interest?

13 A. Yes.

14 Q. How did you find out about it?

15 A. Arash had told me.

16 Q. Just in passing?

17 A. Later on that evening after he did it.

18 Q. But you got a commission on that, right?

19 A. Yes, because we sold merchant processing terminals.

20 Q. You got a commission on the 20,000 from the merchant  
21 processing terminal, right?

22 A. Yes.

23 Q. You got a commission on the \$30,000 from the merchant  
24 processing terminal, right?

25 A. Yes.

IB1JKET5

Owimrin - cross

1 Q. You got a mission on \$150,000 in partnership that you sold  
2 to Jane Thompson, right?

3 A. That wasn't what I thought that was for at first. It was  
4 for merchant terminals.

5 Q. You thought she got \$50,000 in merchant terminals?

6 A. Yes, three merchant terminals --

7 MR. SCHMIDT: Your Honor --

8 THE COURT: You should allow him to finish. Go ahead.

9 A. -- I thought that she was purchasing three merchant  
10 terminals at \$50,000 each. The 20,000 and the 30,000 prior  
11 were for merchant terminals.

12 Q. So she had the first one from First Trend, right, that was  
13 \$50,000?

14 A. Yes.

15 Q. And there was the second one for \$20,000 that you were on  
16 the call for when you were learning about the merchant  
17 processing, right?

18 A. Ah-huh.

19 Q. And then --

20 THE COURT: You have to say, "yes."

21 THE WITNESS: Yes.

22 BY MS. KEARNEY:

23 Q. There was the third one for \$30,000, and that was actually  
24 a third and fourth, right, for two?

25 A. I don't recall if it was for two or for one.

IB1JKET5

Owimrin - cross

1 Q. You were on the call, though, right?

2 A. Yes.

3 Q. Was there something different about the third and fourth  
4 from the second merchant terminal, that it costs something  
5 different?

6 A. I think that the 50, those two -- can we see the contracts?  
7 Is that possible?

8 Q. I am asking you a question. What do you remember?

9 A. I don't recall.

10 Q. And she bought three more for \$150,000, and that is your  
11 testimony?

12 A. My testimony is yes, I thought that she was purchasing  
13 three merchant terminals for \$50,000 each.

14 THE COURT: Did you get a commission from that  
15 \$150,000 sale?

16 THE WITNESS: I did.

17 BY MS. KEARNEY:

18 Q. And you got a commission for that \$150,000 even though you  
19 weren't even on the phone?

20 A. I was on the phone for the merchant terminals pitch. I  
21 wasn't on the phone for the partnership part of it.

22 Q. You didn't know about the partnership, right?

23 A. I knew about it after.

24 Q. But you got a commission on that, right?

25 A. Yes, that was part of it. It was all wound-up into one.

IB1JKET5

Owimrin - cross

1 There was three merchant terminals as well as the partnership.  
2 I didn't know the partnership was even going to be there until  
3 after.

4 (Off-the-record discussion)

5 THE COURT: Ms. Kearney, I need to give the jury a  
6 break at some point.

7 MS. KEARNEY: This is great.

8 THE COURT: Ladies and gentlemen, I am sorry to have  
9 kept you so long.

10 (Jury excused)

11 THE COURT: You may step down, sir. Approximately how  
12 much longer do you think you have, Ms. Kearney?

13 MS. KEARNEY: I am really not sure.

14 THE COURT: Are we talking an hour.

15 MS. KEARNEY: What time is it now?

16 THE COURT: 4:00 o'clock.

17 MR. SCHMIDT: I want to let my client know, because he  
18 is on cross-examination, that I can't talk to him about his  
19 examination.

20 THE COURT: Yes.

21 MR. SCHMIDT: I can talk to him about timing, but not  
22 about his examination.

23 THE COURT: Right, that is correct.

24 (Recess)

25 (Continued on next page)

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Owimrin - Cross

1 THE COURT: Bring in the jury in, please.

2 Let's try to complete the cross if you can this  
3 afternoon, maybe even redirect.

4 Do you have a sense of redirect, Mr. Schmidt, how  
5 long, if any, on redirect?

6 MR. SCHMIDT: Very brief so far.

7 THE COURT: We may be able to finish that this  
8 afternoon then.

9 Would that mean you would be resting?

10 MR. SCHMIDT: Your Honor, we have a stipulation that  
11 we need --

12 THE COURT: You will have a stipulation.

13 MR. SCHMIDT: That's not quite ready. And then I have  
14 to make a determination based on the cross-examination whether  
15 or not I am going to call my expert.

16 THE COURT: The name person, the Americanization of  
17 Emily person.

18 MR. SCHMIDT: That's correct.

19 THE COURT: The jury wants to know about next week.  
20 So we will talk when this afternoon is over. I will talk to  
21 the lawyers on the record about what it looks like, and then I  
22 will be able to tell this jury. They would like to know today  
23 so they can make plans.

24 (Continued on next page)

25

IB18KET6

Owimrin - Cross

1 (Jury present)

2 THE COURT: Please be seated.

3 Ms. Kearney, the continuation and conclusion of your  
4 cross-examination.

5 MS. KEARNEY: Thank you.

6 BY MS. KEARNEY:

7 Q. Mr. Owimrin, when we left off we were discussing Jane  
8 Thompson. Do you remember that?

9 A. Yes.

10 Q. We were discussing the merchant terminals and the  
11 partnership offer that she invested in, right?

12 A. Yes.

13 Q. We were talking about the call, I believe it was Government  
14 Exhibit 165, page 31, on February 3, 2015. And it was your  
15 testimony, I believe, that you were initially on that call  
16 because you were talking about the merchant terminals, right?

17 A. Correct.

18 Q. And then at some point you handed off that phone to Zach  
19 Peterson, right?

20 A. Correct.

21 Q. And you handed it off to Zach, and that was Arash, right?

22 A. That was Arash? Is that what you said?

23 Q. Zach is Arash?

24 A. Yes.

25 Q. So you hand the phone to Arash, right, and you left the



IB18KET6

Owimrin - Cross

1 room?

2 A. No, I got on another call.

3 Q. So you stuck around. You were in the room. And Arash --  
4 sorry?

5 A. No.

6 Q. You were not in the room?

7 A. No.

8 Q. You left the room?

9 A. I could have walked upstairs with my headset on.

10 Q. You left Arash alone on the phone with Jane Thompson?

11 A. Correct.

12 Q. You had no idea what he was saying?

13 A. He was supposed to be welcoming her, because we had already  
14 previously made the sale for the merchant processing. I was  
15 getting the billing information basically set. Then I gave him  
16 the phone to welcome her. He wanted to speak to her to welcome  
17 her, you know, congratulate her, whatever he wanted to say.

18 Q. This is a welcome call to Jane Thompson?

19 A. Not a welcome call, but he was congratulating her  
20 on -- obviously, it's a big investment, it's a big step, so he  
21 wanted to speak to her.

22 Q. So you hand off the phone so that Arash can welcome Jane  
23 Thompson to the merchant terminal world, right?

24 A. To congratulate her for making a big decision and to talk  
25 to her, just to talk to her in general.

IB18KET6

Owimrin - Cross

1 Q. Then you leave the room?

2 A. I get on another appointment.

3 Q. In another room, right? You just told us that.

4 A. Yes, upstairs.

5 Q. So you left the room?

6 A. Correct.

7 Q. OK. And it's your testimony that you didn't know what Zach  
8 said to her, you didn't know what Arash said to her?

9 A. No, not at that time.

10 Q. And yet you got paid commission on that, right?

11 MR. SCHMIDT: Objection. Asked and answered.

12 THE COURT: I will allow it. It's cross.

13 Q. You got paid commission on that?

14 A. Yes.

15 MS. KEARNEY: Can we look at Government Exhibit 909.

16 Ms. Lee, can you zoom in on the February 8, 2016  
17 entries.

18 Q. On February 8, 2016, \$12,500 was deposited into your  
19 account, isn't that right?

20 A. Correct.

21 Q. Now, Mr. Owimrin, you testified about your use of oxycodone  
22 while you were working at Olive Branch?

23 A. Correct.

24 Q. And while you were working at A1 too, and again when you  
25 were at Consumer Shield, right?

IB18KET6

Owimrin - Cross

1 A. Correct.

2 Q. You testified that sometimes you bought oxycodone from  
3 Michael Finocchiaro, right?

4 A. Correct.

5 Q. And I think you said Anthony Medeiros?

6 A. He was the primary person I did, yes.

7 Q. When you were at Olive Branch and Al, was Arash Ketabchi  
8 selling oxycodone?

9 A. Not to my knowledge at that time.

10 Q. So Arash Ketabchi -- I just want to back up.

11 So when you get a legal prescription for oxycodone,  
12 you get that from a doctor, right?

13 A. Yes.

14 Q. Part of the process of maintaining that prescription is you  
15 have to submit urine tests, right?

16 A. Correct.

17 Q. When you submit a urine test, the doctor is looking for  
18 verification that the patient is the one taking the pain  
19 medication, right?

20 A. Correct.

21 Q. Because if the patient isn't taking it, maybe he is selling  
22 it to someone else, right?

23 A. Correct.

24 Q. And you at the time were using oxycodone, right?

25 A. Correct.

IB18KET6

Owimrin - Cross

1 Q. So there came a time then when Arash Ketabchi asked you for  
2 your urine, right?

3 A. This was at Olive Branch?

4 Q. At Olive Branch or at A1, you tell me.

5 A. At A1 Arash asked me, but at Olive Branch Mike Finocchiaro  
6 asked me.

7 Q. So you were asked on a couple of occasions for your urine?

8 A. Four or five.

9 Q. And you gave it to Michael Finocchiaro, right?

10 A. I did.

11 Q. And you gave it to Arash, right?

12 A. Later on at A1 I did.

13 Q. Your understanding of why Arash needed that was so that he  
14 could obtain oxycodone prescriptions, correct?

15 A. Correct.

16 Q. And your understanding was that he himself was not using  
17 oxycodone, right?

18 A. Correct.

19 Q. Otherwise he wouldn't need your urine, right?

20 A. Not necessarily, but that is correct with Arash.

21 Q. So he wasn't using oxycodone?

22 A. He was not.

23 Q. But he was obtaining prescriptions for oxycodone?

24 A. I came to find out at that time he was.

25 Q. But it's your testimony that he wasn't selling oxycodone?

IB18KET6

Owimrin - Cross

1 A. No. You were talking about Olive Branch first.

2 Q. I said at Olive Branch and at A1, was Arash Ketabchi  
3 selling oxycodone?

4 MR. SCHMIDT: Objection, your Honor. It's a compound  
5 question.

6 THE COURT: Thank you.

7 You may answer.

8 A. From what I understood of your question, you were asking me  
9 about Olive Branch first, and at that time I wasn't aware that  
10 Arash was selling Oxycontin. But when I had left to A1, later  
11 on I did find out that he was.

12 Q. How did you find out?

13 A. Through Fino.

14 Q. Then there came a time when Arash asked you if he could use  
15 your dirty urine to obtain a prescription for oxycodone, is  
16 that right?

17 A. That is correct.

18 Q. So it's your testimony now that he was selling oxycodone?

19 A. Correct.

20 Q. And he asked you on several occasions to do that, right?

21 A. He asked me once.

22 Q. It was an understanding between the two of you of what he  
23 was using that for, right?

24 A. Yes, because he would give me a couple of them if I did it.

25 THE COURT: You mean in exchange for your providing

IB18KET6

Owimrin - Cross

1 your dirty urine, that is, one that showed evidence of drug  
2 use, to Arash, you would receive oxycodone pills in return?

3 THE WITNESS: Yeah. He would give me -- he gave me  
4 five of them in return.

5 Q. So that's like a hundred bucks?

6 A. Around there.

7 Q. Now, we talked earlier about some of the rules that were in  
8 place at Olive Branch when you worked there. Do you remember  
9 that?

10 A. I do.

11 Q. And you testified that you weren't allowed to make earnings  
12 representations, right?

13 A. Correct.

14 Q. And you weren't allowed to make representations about  
15 people's taxes, right?

16 A. Specific tax claims, yes.

17 Q. There were also some rules about the kinds of customers you  
18 could sell to, right?

19 A. Yes.

20 Q. You weren't supposed to sell to people over 80 without  
21 approval?

22 A. It was anyone over 65 you had to get approval.

23 Q. You had to get approval from Bill Sinclair for that, right?

24 A. Correct.

25 Q. There were also caps on the amount of money per transaction

IB18KET6

Owimrin - Cross

1 you could process, right?

2 A. That varied, but yes.

3 Q. But there was a cap, whether or not the amount varied,  
4 right?

5 A. There was a cap that they had in place, but it was  
6 flexible. It depended on if Bill Sinclair approved you or not.

7 Q. So to go over the cap, you had to get Bill's approval?

8 A. Correct.

9 Q. And that cap at various times was \$10,000 or \$15,000?

10 A. Per transaction. Per sale. Excuse me.

11 Q. You testified about you moving from Olive Branch to A1. Do  
12 you remember that?

13 A. I do.

14 Q. Part of that decision were these rules were getting in the  
15 way, right?

16 A. No.

17 Q. Well, the cap on the transactions, that's limiting the  
18 amount of commission you could get, right?

19 A. The cap was always there.

20 Q. And it limits the amount of commission you could get,  
21 right?

22 A. The cap was always there.

23 Q. And it limits the amount of commission you could get,  
24 right?

25 A. I guess, yes.

IB18KET6

Owimrin - Cross

1 Q. If you can't charge more than \$10,000, you can't make more  
2 than \$1,000 if you're getting a 10 percent commission, right?

3 A. That statement that you're making is true, yes.

4 Q. And around the time that you were leaving Olive Branch,  
5 Olive Branch instituted what we have heard talked about as a  
6 retention policy, right?

7 A. It was about three months, four months before I left.

8 Q. That's because they were experiencing a lot of chargebacks,  
9 right?

10 A. Yes.

11 Q. So they started holding money in reserve from each of the  
12 salespeople to cover those chargebacks, right?

13 A. A small percentage, yes.

14 Q. You weren't making as much commission because of that  
15 either, right?

16 A. It wasn't that much less, but yes, it wasn't as much.

17 MS. KEARNEY: Ms. Lee, could you please put up  
18 Government Exhibit 909 again.

19 Could you please zoom in on the September 2015  
20 entries.

21 Q. So in July 2015, you're getting more than \$8,000 from Olive  
22 Branch, right?

23 A. Yes.

24 Q. Then for all of September 2015, a little more than \$1,000,  
25 is that right?



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Owimrin - Cross

1 A. Correct.

2 Q. And after that you left?

3 A. Correct.

4 Q. So when you were at Olive Branch during those final few  
5 months, you were aware of the volume of chargebacks that were  
6 happening, right?

7 A. Not a specific number, but I was aware chargebacks were  
8 happening.

9 Q. Well, you were aware when your commissions would be held up  
10 because there might be a chargeback, right?

11 A. My commissions were never really held up because of that.

12 Q. You didn't get any chargebacks?

13 A. I did, but my commissions weren't really held up because of  
14 that. They would usually come in later on after I had already  
15 gotten paid, and I really wasn't aware of when they came in.

16 Q. Wasn't that the point of the retention policy, is that you  
17 were getting paid before the chargeback was being settled, and  
18 so therefore Olive Branch would have to hold onto something?

19 A. That was the point of the retention.

20 Q. Mr. Owimrin, you're familiar with the term "whale," right?

21 A. Yes.

22 Q. That's a term that's used to refer to a biz-op customer  
23 with a lot of cash, right?

24 A. And specifically willing to spend it.

25 Q. So whale is someone with access to a lot of cash and is

IB18KET6

Owimrin - Cross

1 willing to spend that cash?

2 A. A lot of cash, available credit.

3 Q. Liquidity?

4 A. I don't know what that means.

5 Q. You're also familiar with the term "laydown," right?

6 A. Say that again.

7 Q. A laydown?

8 A. Yes.

9 Q. A laydown is someone who is an easy sale, right?

10 A. Somebody that is excited to get things going and is an  
11 easier sale.

12 Q. Someone like Jane Thompson?

13 A. I guess, yes, you could say that, yes.

14 Q. She was a whale too, right, she had a lot of cash?

15 A. Yes.

16 Q. And she was willing to and eager to spend it, right?

17 A. Correct.

18 Q. And you know what it means to "save a sale," right?

19 A. I do.

20 Q. You save a sale when the customer is trying to get a refund  
21 or trying to withdraw their contract, right?

22 A. Or if they get nervous and want to cancel immediately, or  
23 don't want to sign the contract. There's a bunch of different  
24 ways you can save a sale.

25 Q. Or when they file a chargeback and you want to talk them

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Owimrin - Cross

1 out of it, right?

2 A. That wouldn't be up to me.

3 Q. That's also part of saving a sale, right?

4 A. That would be saving the owner's deal. It wouldn't be  
5 considered saving a sale. Saving a sale to me would be trying  
6 to save the actual sale, her trying to cancel, not charging  
7 back.

8 Q. You were involved in saving sales during your time at Olive  
9 Branch, right?

10 A. Yes.

11 Q. You had talked to the customers and you would hear the  
12 kinds of things that made them want to cancel, right?

13 A. If they had questions about their contracts, I would answer  
14 them.

15 Q. And if they had doubts about their contracts, you would  
16 address them, right?

17 A. To the best of my knowledge, I would.

18 Q. I think you testified that that was primarily Michael  
19 Finocchiaro's job, right?

20 A. Not to go through the contract with them if they had  
21 questions. Finocchiaro's job was, if they had initiated a  
22 chargeback or wanted to cancel past their 14 days or three to  
23 14 days right to rescind, then they would be on him. If they  
24 did it in between those days, first the sales rep would talk to  
25 them, try to answer questions, try to get them to stay on. If

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Owimrin - Cross

1 we couldn't, we would have to send it to Michael Finocchiaro to  
2 initiate the refund or try to save it himself.

3 Q. So sometimes you would talk to customers when they were  
4 your own sales, right?

5 A. Yes.

6 Q. And sometimes Michael Finocchiaro would ask you to do saves  
7 for him if he wasn't around, right?

8 A. No.

9 Q. Did you ever listen to Michael Finocchiaro save a sale?

10 A. Not that I could remember. I may have overheard it, but I  
11 never sat down to actually listen to him save a sale.

12 Q. There are some kind of stock phrases that salespeople use  
13 when they are trying to save a sale, right?

14 A. Not that I'm aware of.

15 Q. Things like "Rome wasn't built in a day," right?

16 A. I never used that or heard of that.

17 Q. Never heard anyone --

18 A. I heard that saying, but not in sales.

19 Q. You never heard Pete DiQuarto use that at Olive Branch?

20 A. No.

21 Q. But you heard the reasons why the customers were backing  
22 out of these contracts, right?

23 A. Some of the verbiage in the contracts that worried them.

24 Q. Sometimes they would just tell you they were out of money?

25 A. Or they were nervous.

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Owimrin - Cross

1 Q. Or they were out of money, right?

2 A. Sometimes.

3 Q. Or they were broke, like on your calendars, right?

4 A. Correct. They wouldn't say broke.

5 Q. No. You said broke?

6 A. I said broke.

7 Q. Which means they have got nothing?

8 A. Or they don't want to move forward.

9 Q. But some of these people were colloquially broke; they had  
10 no money, right?

11 A. Yeah.

12 Q. Or some people just wanted to see some results before they  
13 spent any more money, correct?

14 A. Correct.

15 Q. Mr. Schmidt asked you about trying to open a merchant  
16 processing account, right? Do you remember that?

17 A. Yeah. He brought that up.

18 Q. You testified that you weren't able to, but you had asked  
19 some other people if perhaps they could?

20 A. I asked.

21 Q. You weren't able to open a merchant processing account?

22 A. I was not. I got declined.

23 Q. But you did open a bank account, Mr. Owimrin, right?

24 A. I was a cosigner on an account.

25 Q. That was the Element bank account?

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Owimrin - Cross

1 A. I actually don't recall the name of it.

2 Q. You were a cosigner on the account though, right?

3 A. Yeah. I did cosign on one of -- the account that Bill had  
4 asked me to cosign on, I did cosign the account.

5 Q. And your other cosigner was Masoud Kouчек Manesh?

6 A. Correct.

7 Q. But you don't remember what the name on that account was?

8 A. I don't off the top of my head.

9 Q. But the purpose of that bank account was to receive the  
10 funds from the merchant account that Mr. Kouчек Manesh was  
11 able to set up, right?

12 A. I have no idea.

13 Q. You just opened up a bank account?

14 A. I didn't open it up. They asked me to be a cosigner.

15 Q. And you put your name on it?

16 A. I did.

17 Q. Without knowing what it was for?

18 A. I did. Well, they explained that it was just a bank  
19 account, and if they needed to access the bank account, they  
20 wanted somebody that was in the office to be able to do it,  
21 because that gentleman named Masoud, the primary account  
22 holder, was not -- they didn't live close by, so if they needed  
23 access to it, they wanted somebody close by to be able to  
24 access it, which I never had to do.

25 Q. So they just needed you to access Mr. Kouчек Manesh's

IB18KET6

Owimrin - Cross

1 account?

2 A. Yeah. He was their partner, I guess, in a sense.

3 Q. And that account, it was your understanding, was used to  
4 process transactions for Olive Branch and for A1, right?

5 A. I thought it was just a business checking account that I  
6 signed.

7 Q. You didn't know it was connected to a merchant account?

8 A. I didn't. I found out later, but at the time I had no  
9 idea.

10 Q. Do you remember testifying about Government Exhibit 122,  
11 that's that voice mail recording?

12 A. Yes, I do.

13 Q. Do you remember it well or do you want me to play it again?

14 A. I remember it. You could play it if you want, but I  
15 remember it.

16 Q. I have just a couple of questions about it.

17 I think it was your testimony that -- that was you on  
18 that recording?

19 A. It was me, Arash, Reagan and Jenn.

20 Q. So when you said "so they went and bought with someone  
21 else, you can't control them," you were talking about customers  
22 who went to other companies for their purchases, right?

23 A. I was talking about customers that we had pitched and sold  
24 or came to agreements with the previous week, and who might  
25 have gone and purchased products from other companies.

IB18KET6

Owimrin - Cross

1 Q. So they went and bought with someone else, so they hadn't  
2 done that yet?

3 A. I had no idea. I was basically just explaining to Arash if  
4 you want to tell the merchant we can't get in touch with them,  
5 maybe they went and bought with another company. There is  
6 nothing we could do to control them. We sold them, we had a  
7 signed contract, but we never actually were able to charge the  
8 funds. So if they decided that they didn't want to do it, they  
9 could have went with another company. So that's what I was  
10 explaining to him.

11 Q. So you were hoping Arash would come up with an excuse to  
12 give to the merchant processor, is that what I understand?

13 A. No.

14 Q. In any event, if they went and bought with someone else,  
15 that's actually totally possible, those customers could have  
16 bought with other companies, right?

17 MR. SCHMIDT: Objection to the form of that question.

18 THE COURT: Sustained.

19 Q. There are a lot of biz-op companies out there, right?

20 A. Yes.

21 Q. And customers get calls from a lot of different companies,  
22 right?

23 A. Yes.

24 Q. In fact, sometimes when you talk to customers they would  
25 tell you about the other companies that had called them?



IB18KET6

Owimrin - Cross

1 A. Correct.

2 Q. And so biz-op is a competitive business, right?

3 A. It's a fair statement.

4 Q. So there is incentive to lock down the sale, get that  
5 signed contract, as soon as you get a yes on the phone, right?

6 A. I mean -- can you repeat that?

7 Q. Let me ask it a different way.

8 As soon as you get a credit card number, you want to  
9 run that, right?

10 A. You want to preauthorize the charge.

11 Q. And that's so no one else can get to that customer between  
12 when those charges go through and you calling them, right?

13 A. That's so we secure the deal.

14 Q. Then we talked a little bit about Charlene Foster. You  
15 said "I will get Charlene today"?

16 A. Yes, ma'am.

17 Q. And that you were referencing you were going to try to sell  
18 her again?

19 A. No. I had already had her verbally commit and sign  
20 contracts. I was going to actually run the charges that day,  
21 after I had contacted her.

22 Q. So she had already agreed to a sale?

23 A. Yes.

24 Q. That's your testimony?

25 A. Yes.

IB18KET6

Owimrin - Cross

1 Q. But you hadn't run her card?

2 A. No.

3 Q. What was the amount of the sale she agreed to?

4 A. \$20,000.

5 Q. But you said you are going to put at least 20 grand on that  
6 card, right?

7 A. Yeah, that was just the verbiage I was using with Arash. I  
8 wouldn't have put more.

9 Q. Because she didn't agree to that, right?

10 MR. SCHMIDT: Objection, your Honor.

11 THE COURT: Sustained.

12 Next question.

13 Q. Did you tell Arash, I am going to put at least 20 grand on  
14 that card?

15 A. I meant out of the 40,000 in sales that we had the previous  
16 week, I would get at least 20,000 of that done today for us as  
17 a company -- as a company.

18 Q. From Ms. Foster?

19 A. Yes, ma'am.

20 Q. At least 20 grand from Ms. Foster?

21 A. At least, yes.

22 Q. Arash told you that was actually risky, right?

23 A. To put that amount through, yes.

24 Q. On one card, right?

25 A. Yes, ma'am.

IB18KET6

Owimrin - Cross

1 Q. But it's only risky to put that amount on a card if there  
2 is a chargeback, right?

3 A. Or even a cancel, even if we had to refund it, to my  
4 knowledge, that would put a red flag on a merchant account. So  
5 even if you have to refund it, it's like a negative hit on that  
6 account and could cause it to be shut down.

7 Q. That \$20,000 charge on its own would not have been a  
8 problem at A1, right?

9 A. Yes.

10 Q. But you also told Arash that Charlene Foster thought that  
11 25 was going through already?

12 A. Yes.

13 Q. And that was from a sale that Elite had made to her?

14 A. Yes.

15 Q. And Elite canceled that sale?

16 A. She canceled that sale with Elite.

17 Q. So Elite refunded Charlene Foster her money?

18 A. She canceled with them.

19 Q. Then you were going to run it through as yours because she  
20 didn't understand that they had canceled?

21 A. That's not what I said.

22 Q. Well, you said, "They never charged her the 20,000, the  
23 initial sale of the 20,000, but she thinks she did it. So I  
24 told her, I was like, no, we just have to rerun it."

25 So is it your testimony that you did not mean that you

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Owimrin - Cross

1 were going to rerun the Elite sale as an A1 sale?

2 A. Yes.

3 Q. Then you were just going to send out the initial contract,  
4 that is the A1 contract, to cover the amount of the Elite sale,  
5 right?

6 A. Correct. That's not what I was going to do.

7 Q. In fact, you did try to sell to Charlene Foster on November  
8 3, right?

9 A. I did.

10 Q. Did you call her before you did that?

11 A. Yes.

12 Q. Use your cell phone?

13 A. I can't remember off the top of my head.

14 Q. Did you tell her that Elite had canceled?

15 A. I told her, yes -- she told me that she canceled with  
16 Elite.

17 Q. Did you tell her that, no, that was going to be a charge  
18 with A1 now?

19 A. I said, no, we could do it for \$20,000 instead. She was  
20 uncomfortable with the amount. I said we could do it for  
21 20,000 instead of 25,000.

22 Q. Remind me, Elite is a lead source for A1, right?

23 A. Yes, ma'am.

24 Q. So A1 bills out the business that Elite sets up, correct?

25 A. Correct.

IB18KET6

Owimrin - Cross

1 Q. Let's talk about some other kinds of leads.

2 You testified earlier about the various business lines  
3 that A1 had going, I think you called it an Amazon affiliate  
4 business?

5 A. I was speaking about Olive Branch at the beginning.

6 Q. I'm sorry. Olive Branch. Did A1 have a similar line of  
7 business?

8 A. Yes. But there was a fourth one that got introduced at  
9 Olive Branch later on and then continued in A1.

10 Q. Was that grants?

11 A. We would seek grant leads, yes.

12 Q. And a grant lead are people who have been told they have  
13 got a government grant, right?

14 A. Correct.

15 Q. So they are going to have money coming in, right?

16 A. They would be getting a grant and then they would also get  
17 like a business sold with that grant.

18 Q. They would use the grant to buy their business?

19 A. No. When they initially sold them the grant, they would  
20 sell them a business too, a Web site as well.

21 Q. You're using air quotes. Is that because the grant doesn't  
22 exist?

23 A. Yes, because the grant doesn't exist.

24 Q. But Olive Branch used grant leads for a period of time,  
25 right?

IB18KET6

Owimrin - Cross

1 A. Yes.

2 Q. And A1 used grant leads for a period of time, right?

3 A. I believe every biz-op floor uses those leads.

4 Q. In fact, you sold grant leads back to Bill Sinclair, right?

5 A. I brought them with me. I wouldn't say sold them.

6 Q. Did you paid for them?

7 A. I got a job opportunity.

8 Q. Nevertheless, you gave grant leads to Bill Sinclair to use  
9 for Consumer Shield, right?

10 A. Correct.

11 Q. And that was his debt consolidation pitch?

12 A. Yes.

13 Q. And part of the pitch, when you're selling a grant lead, is  
14 that you need to run this business or take advantage of this  
15 opportunity because that grant might never come, right?

16 A. I don't know. I never pitched a grant.

17 Q. You just sold grant leads?

18 A. Well, they had a business too, so I didn't sell the grant.

19 Q. You sold the grant lead?

20 A. I guess, yes. It was still a biz-op lead at the same time.  
21 It was labeled as a grant lead, but it was a biz-op lead as  
22 well.

23 Q. At a certain point you realized no money ever came from  
24 grants, right?

25 A. Pretty quickly.

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Owimrin - Cross

1 Q. That's why these leads are a good candidate for debt  
2 consolidation, right?

3 A. Correct.

4 Q. Because these are people who sunk a lot of money, and that  
5 money never came back, right?

6 A. Yeah. Yes.

7 Q. In fact, one candidate for debt consolidation was Ms.  
8 Thompson, right?

9 A. I did bring her to Bill's attention, right.

10 Q. Because she had spent \$19,000 with you, right? And then  
11 other --

12 THE COURT: You're shaking your head.

13 A. Yes.

14 Q. Another 10 with Reagan, right?

15 A. I believe those were cash deals, but --

16 Q. Cash?

17 A. I believe those were cash deals. I believe she wrote us a  
18 check for those.

19 Q. So she wrote checks for those?

20 A. That wouldn't be considered debt consolidation.

21 Q. Then she wrote another check for 20,000?

22 A. Correct.

23 Q. Then another one for \$30,000, right?

24 A. Correct.

25 Q. And then there is that 149, right?

IB18KET6

Owimrin - Redirect

1 A. Correct.

2 Q. Then after that --

3 THE COURT: 149?

4 Q. \$149,000 check, right?

5 A. Correct.

6 Q. Then after that she wrote another check, right?

7 A. Yes, ma'am.

8 Q. \$10,000?

9 A. Yes.

10 Q. That was for her CPA tax services?

11 A. Correct.

12 Q. And those were all checks?

13 A. I believe so, if I am not mistaken.

14 Q. But when you came back to Consumer Shield, you thought she  
15 might be a good candidate for this new product that Bill  
16 Sinclair was working on?

17 A. I learned from talking to her, I knew that she did also  
18 have credit card debt, so yes.

19 MS. KEARNEY: No further questions.

20 MR. SCHMIDT: Briefly, your Honor.

21 THE COURT: Yes, sir. Redirect.

22 REDIRECT EXAMINATION

23 BY MR. SCHMIDT:

24 Q. Andrew, you learned about Olive Branch selling -- did Olive  
25 Branch sell grant leads at the same floor that you were on?



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Owimrin - Redirect

1 A. For a time. They introduced it. I was not there for it,  
2 but from what I have heard, yes.

3 Q. When you came back, it was no longer there?

4 A. It was no longer there.

5 Q. Was the floor used for something else?

6 A. Yes. We put our appointment setters in there.

7 Q. You never sold a grant, is that correct?

8 A. No, never.

9 Q. But when you forwarded leads to Mr. Sinclair that you  
10 received, you forwarded every single lead that Arash received,  
11 is that right?

12 A. Yeah, I forwarded a bunch of list of leads, grants being  
13 one of them.

14 Q. But for debt consolidation -- withdrawn.

15 The purpose of debt consolidation for grants was to  
16 help people who now have credit card debt as a result of  
17 grants?

18 A. Not just grants, just credit card debt in general.

19 Q. But people who were sold grants, that would be an  
20 indication that they would probably have credit card debt?

21 A. Yes, sir.

22 Q. Did you think that the credit card consolidation relief was  
23 a real thing?

24 A. I did.

25 Q. Who explained it to you?

IB18KET6

Owimrin - Redirect

1 A. Mr. Sinclair.

2 Q. Did you believe Mr. Sinclair?

3 A. I did.

4 Q. Now, you understood what the term "whale" was?

5 A. Correct.

6 Q. Did you ever use it?

7 A. No.

8 Q. Now, when you peed in the cup for Fino, you knew he was  
9 using Oxycontin, didn't you?

10 A. He was, yes.

11 Q. Did he explain to you why he needed your urine as opposed  
12 to his own if he also was using oxycodone?

13 A. Yes.

14 Q. What did he tell you?

15 A. Because the urine couldn't contain any other drug but that  
16 drug.

17 Q. Were you using any other drug?

18 A. No, sir.

19 Q. Was Fino any other drug?

20 A. Yes.

21 Q. What was he using?

22 A. Cocaine, marijuana, the list goes on.

23 Q. Now, we saw some of the checks that you received as a  
24 result of the sales to Ms. Thompson. Not the full 10 percent  
25 was there. How come?

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Owimrin - Recross

1 A. Because I had to pay Arash's uncle the loan off. He would  
2 just take the money out of my paychecks, or I would cash it and  
3 give him the cash, but sometimes he would just take it directly  
4 out of my pay before I even received the check.

5 Q. Have you knowingly ever tried to defraud anybody?

6 A. No.

7 MR. SCHMIDT: No other questions.

8 THE COURT: Thank you. You may step down.

9 MS. KEARNEY: I have recross.

10 THE COURT: Go ahead.

11 Mr. Paul, I take it nothing?

12 MR. PAUL: I have no questions.

13 RECROSS EXAMINATION

14 BY MS. KEARNEY:

15 Q. Mr. Schmidt asked you about the grant leads that you were  
16 selling. I just want to make sure we are clear on this.

17 There are companies that sell people grants, right?

18 A. There are companies that sell people grants, correct.

19 Q. Those grants are fiction, those grants don't exist?

20 A. Yes.

21 Q. And when you get a grant lead, you are selling biz-op to  
22 people who have previously bought grants, is that right?

23 A. Well, when they bought the grant, they also bought a Web  
24 site with it; that company, whatever company that was, also  
25 gave them a Web site along with it. Whether it be a merchant

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Owimrin - Redirect

1 processing, Amazon affiliate, they would get a Web site with  
2 it, and we would add on to that.

3 Q. And that Web site was for something in connection with  
4 their grant?

5 A. I don't know. I know it was a Web site.

6 MS. KEARNEY: No further questions.

7 THE COURT: Anything sir?

8 MR. SCHMIDT: Very briefly.

9 REDIRECT EXAMINATION

10 BY MR. SCHMIDT:

11 Q. The Web site that you understood that these people  
12 purchased was one of the three that you understood could make  
13 money: Merchant processing, affiliate and --

14 A. Drop shipping.

15 Q. -- drop shipping. Is that correct?

16 MS. KEARNEY: Objection.

17 THE COURT: Sustained as to form.

18 Q. The Web site that you understood that people also wasted  
19 their money on grants received were what kind of Web sites?

20 A. The three I stated earlier: The merchant, affiliate, or  
21 drop ship.

22 Q. So while you understood that people spent money for grants  
23 that they were not going to get, they also had a Web site that  
24 can make them money -- withdrawn.

25 MS. KEARNEY: Objection.

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1 THE COURT: I will allow it.

2 Q. You understood that the people who purchased grants also  
3 had a Web site that had the ability to make money?

4 A. Correct.

5 MR. SCHMIDT: No other questions.

6 THE COURT: Thank you. You may step down. You are  
7 excused.

8 Next witness for the defense.

9 MR. SCHMIDT: May we have a moment, your Honor?

10 THE COURT: A moment, yes.

11 MR. SCHMIDT: May we approach, your Honor?

12 THE COURT: Sidebar.

13 (Continued on next page)

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1 (At the sidebar)

2 MR. SCHMIDT: The good news is that I am saving the  
3 courts \$3,000 by not calling the expert.

4 THE COURT: Not the courts. But go ahead. The CJA  
5 fund.

6 MR. SCHMIDT: It comes from the administrative office  
7 by the way.

8 The bad news is we are working on a very brief  
9 stipulation for a prior inconsistent statement that the  
10 government, because they have been very busy, hasn't finished.  
11 And we are perfectly willing to rest with the idea that we  
12 could put the stipulation in tomorrow, or we could not rest now  
13 and rest after we put the stipulation in, whichever way your  
14 Honor wishes.

15 THE COURT: Can you do the stipulation right here and  
16 now?

17 MS. FLETCHER: It's in a Word document, your Honor.  
18 Defense sent us a version of the Word document last night. We  
19 have changes to it. In order for us to agree, we would need to  
20 go to a computer and make the changes.

21 THE COURT: Is that something you can do now?

22 MS. FLETCHER: I could. But the jury would be  
23 waiting.

24 THE COURT: How long will that take?

25 MS. FLETCHER: A few minutes. I am happy to do it,

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1 your Honor, if your Honor wants the jury to wait.

2 (Counsel conferred)

3 THE COURT: The parties are going to work on a  
4 stipulation now. That was the off-the-record discussion, but  
5 just between the lawyers, not with the Court.

6 Then Mr. Schmidt will read the stipulation into  
7 evidence and rest.

8 Now, let's turn to you, sir. What is your case?

9 MR. PAUL: We have our expert flying in as we speak,  
10 unfortunately, to the expense of our tax dollars.

11 We have Mr. Fino, who is supposed to be here at 9:15  
12 tomorrow morning, by subpoena. His attorney has assured me he  
13 will be here.

14 We have a character witness, my client's sister, that  
15 I have informed the government about.

16 The only issue remaining, and I told the government I  
17 would let them know by this evening, before Mr. Schmidt's  
18 bedtime, whether my client is testifying or not. That's the  
19 only issue remaining. If he does testify, we are going to be  
20 taking up a good part of tomorrow.

21 THE COURT: How long is your West Coast expert?

22 MR. MITCHELL: No more than 30 minutes.

23 THE COURT: How long is your direct on Mr. Fino?

24 MR. PAUL: Your Honor hadn't ruled. I intend to  
25 submit a response to Ms. Kearney's letter motion that she

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1 submitted last night that I didn't see until I woke up.

2 MR. MITCHELL: Rule 611 issue.

3 THE COURT: Let's assume it's direct, because I think  
4 that's what it's going to be, how long?

5 I want to see your paper.

6 MR. PAUL: I wouldn't think it would be more than an  
7 hour.

8 THE COURT: All right. So an hour plus on Fino. 45  
9 minutes on the expert.

10 Character witness.

11 MR. PAUL: 15 minutes.

12 THE COURT: Then you will decide whether or not you  
13 are going to put on your client tomorrow.

14 MR. PAUL: Correct.

15 THE COURT: I would like to be able to give this jury  
16 the afternoon off. They have been really very good. They also  
17 want to know what about next week. We are going to go into  
18 next week regardless of whether we work tomorrow afternoon or  
19 not. In large part, it depends on whether or not your client  
20 is going to testify. I guess between summations, charge, and  
21 deliberations, we are talking probably Monday and Tuesday for  
22 this jury, it seems to me.

23 MR. PAUL: I agree to me.

24 THE COURT: And if they don't decide on Tuesday, it  
25 will go on.



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1 MS. KEARNEY: I think Tuesday is Election Day.

2 THE COURT: It's not a federal holiday. I need to  
3 give them time to vote and there are some who are from Rockland  
4 or Westchester.

5 (In open court)

6 THE COURT: Ladies and gentlemen, there is no need for  
7 you to be here while we are talking. It will just be a few  
8 moments. Why don't you go into your deliberation room and rest  
9 and I will get back to you certainly within 15 minutes at the  
10 latest. Then we will be able to excuse you for the evening  
11 after you come back in.

12 (At the sidebar)

13 THE COURT: Yes, sir.

14 MR. PAUL: Your Honor wants to give the jury tomorrow  
15 afternoon off. Will that still happen with or without my  
16 client testifying? That's my question. If he testifies, there  
17 is no way this jury is going to be excused for the afternoon.  
18 It's going to be into the afternoon.

19 THE COURT: There is no way he is not going to have to  
20 continue his testimony on Monday.

21 MR. PAUL: So that's my question.

22 MR. SCHMIDT: If I may, based on the timing, it seems  
23 to me, I think I understand their case, if Mr. Ketabchi  
24 testifies, because his case is so different than my client's, I  
25 think we will be done with all testimony on Friday, and then we

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1 can sum up and charge on Monday. If he is not testifying, then  
2 they will have the afternoon off.

3 THE COURT: Let me think about this for a second. If  
4 he is not testifying, that's easy, the case is over. Then it's  
5 for the lawyers. If he is testifying, what?

6 MR. SCHMIDT: I think the nature of his case, that his  
7 testimony will not take more than the afternoon. So if they  
8 are sitting in the afternoon, I think we will be finished with  
9 the testimony, at least the defense testimony, on Friday  
10 afternoon, and we can sum up and charge on Monday.

11 THE COURT: But you will be able to do that anyway.

12 MR. SCHMIDT: I understand. But I think that under  
13 any circumstance, whether he testifies or not, we will be able  
14 to sum up and charge on Monday.

15 THE COURT: I agree.

16 MR. SCHMIDT: The only question is the afternoon  
17 tomorrow.

18 MR. PAUL: You're not going to tell the jury that  
19 you're tentatively thinking of giving them the afternoon off  
20 tomorrow, because I don't want to be blamed for them not having  
21 it off.

22 MS. FLETCHER: There is another variable, your Honor.

23 THE COURT: Under this theory, whether they have the  
24 afternoon off or not tomorrow, it sounds like we will be  
25 summing up on Monday.

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1 MS. FLETCHER: Barring a government rebuttal case,  
2 which is possible based on Mr. Owimrin's testimony and as yet  
3 undetermined testimony from Mr. Finocchiaro.

4 MR. PAUL: Can we inquire as to how long you would  
5 estimate that?

6 MS. FLETCHER: I think it depends on the scope of your  
7 direct, and what therefore is the scope of my cross. I may ask  
8 at some point during Mr. Finocchiaro's testimony to make him my  
9 witness rather than have to have a separate rebuttal case,  
10 primarily to have him testify about things that are  
11 inconsistent with Mr. Owimrin's testimony, but that testimony  
12 has just happened so we haven't worked that out yet. But I  
13 didn't want your Honor to promise summations on Monday.

14 THE COURT: I am not telling the jury any of this.

15 MR. PAUL: You're going to be telling them we are  
16 going to be working into next week, Monday, possibly Tuesday?

17 THE COURT: No. I am going to tell them they should  
18 plan for Monday and Tuesday.

19 Do the stip.

20 MS. FLETCHER: If your Honor dismisses the jury  
21 tomorrow, is it the Court's intention to have a charge  
22 conference tomorrow afternoon?

23 THE COURT: No. You don't have the charge yet. I  
24 haven't given you the proposed charge.

25 MS. FLETCHER: I understand.

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1 THE COURT: I would give it to you probably sometime  
2 tomorrow. And the charge conference, which I don't think is  
3 going to be very long, Monday morning. I don't think there is  
4 that much at issue.

5 (Recess)

6 THE COURT: Apparently the stipulation is agreed to?

7 MS. FLETCHER: Yes, your Honor.

8 THE COURT: So Mr. Schmidt I will ask for your next  
9 witness. And Mr. Schmidt, you are going to read the  
10 stipulation into the record and then rest, is that correct?

11 MR. SCHMIDT: I am going to read it, correctly  
12 pronounce the names, and then rest.

13 THE COURT: I think, so that we don't run into the  
14 problem of the jury blaming Mr. Paul and to give the jury a  
15 heads-up, I am going to tell them that we are going to work  
16 through tomorrow until 2:00, so they should bring food for the  
17 mid-morning break. We will adjourn at 2. And I am going to  
18 tell them they should assume they will get their case for  
19 deliberation about Tuesday. Is that fair?

20 MR. PAUL: If your Honor is telling them they are  
21 breaking at 2, and my client chooses to testify, that means we  
22 will do that on Monday.

23 THE COURT: No. he will start the testimony and  
24 continue on Monday.

25 MR. PAUL: Ideally, if he is going to testify, I would

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1 like to get his testimony in and the cross. I don't think  
2 having a weekend for the government to prepare their cross is  
3 really appropriate. That's my concern. If he is going to  
4 testify, I don't think the jury should be told that they are  
5 going to be excused in advance. If he is not going to testify,  
6 then you can tell them tomorrow. But I think to give them an  
7 advance notice that they are going to be excused at 2:00, and  
8 then my client testifies for an hour of his three or four  
9 hours --

10 THE COURT: I am trying to understand that. What is  
11 wrong with that?

12 MR. PAUL: Depending on the timing, it's breaking up  
13 his testimony, which I would rather not do.

14 THE COURT: I understand that.

15 MR. PAUL: And it allows the government an entire  
16 weekend to prepare their cross with regard to his testimony,  
17 and I think that's unfair. Not that I don't think the  
18 government has been preparing their cross in any case assuming  
19 that he may or may not testify.

20 THE COURT: Is it similarly unfair if he begins his  
21 testimony on Monday?

22 MR. PAUL: No.

23 MS. FLETCHER: It's unfair the other way, your Honor.

24 THE COURT: Why?

25 MS. FLETCHER: It would essentially require the

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1 government to prepare a cross and its closing this weekend  
2 without having heard any of the testimony. The government is  
3 always prepared and we will be prepared whenever your Honor  
4 calls on us to sum up or to cross Mr. Ketabchi. But if we are  
5 talking about fairness of requiring parties to prepare or not  
6 prepare tasks, it's equally unfair the other way.

7 THE COURT: I am not going to tell the jury about  
8 tomorrow. We will see if your client testifies and we will  
9 take it from there. I will tell them that everyone's  
10 expectation is that they will get this case for their  
11 deliberation on Tuesday. Fair?

12 Bring the jury in.

13 (Jury present)

14 THE COURT: Please be seated.

15 Next witness for Mr. Owimrin.

16 MR. SCHMIDT: Your Honor, we have a stipulation to be  
17 entered. It's a testimonial stipulation.

18 THE COURT: Go ahead, sir.

19 MR. SCHMIDT: The United States of America v. Andrew  
20 Owimrin and Shahram Ketabchi.

21 It is hereby stipulated and agreed by and between  
22 Andrew Owimrin, by and through his attorneys, Sam A. Schmidt  
23 and Abraham Abegaz-Hassen, and United States of America, by  
24 Geoffrey S. Berman, United States Attorney, Kiersten A.  
25 Fletcher, Benet J. Kearney, and Robert B. Sobelman, Assistant

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1 United States Attorneys, and Shahram Ketabchi, by and through  
2 his attorneys, Kenneth A. Paul and Jacob Mitchell, that:

3 1. If called at trial, Detective Chris Bastos would  
4 testify that, while conducting a post-arrest interview with  
5 Bill Sinclair on March 21, 2017, Detective Bastos took notes.  
6 The notes of that interview indicate that Mr. Sinclair said to  
7 Detective Bastos that "more than half" were "happy." Detective  
8 Bastos interpreted Mr. Sinclair to be referring to his  
9 customers.

10 It is further stipulated and agreed that this  
11 stipulation may be received in evidence at the trial in the  
12 above-referenced matter.

13 It's dated today. It's Exhibit A03.

14 Your Honor, I offer that into evidence, and Andrew  
15 Owimrin rests his defense.

16 THE COURT: A03 admitted.

17 (Defendant's Exhibit A03 received in evidence)

18 THE COURT: Ladies and gentlemen, you have heard Mr.  
19 Owimrin rest. Tomorrow when you come in we will see if  
20 Mr. Shahram Ketabchi wishes to put on a defense because, as I  
21 have told you, defendants are never under any obligation to  
22 present any case whatsoever because the burden is always on the  
23 government to prove its case beyond a reasonable doubt.

24 For planning purposes, you should assume that you will  
25 receive this case for your deliberation on Tuesday. So we will

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1 sit tomorrow. We will sit Monday. We will sit Tuesday. I  
2 can't promise that's the end of the case because obviously you  
3 need to deliberate. That's everyone's best estimate at this  
4 time.

5 Thank you. We will see you tomorrow at 9:15.

6 MR. SCHMIDT: Your Honor, if I may, Tuesday is  
7 Election Day.

8 THE COURT: Tuesday is Election Day. It is not a  
9 federal holiday. We will make sure you have time to vote. We  
10 will work that out. So you will tell us when your polling  
11 places are open.

12 (Jury exits courtroom)

13 THE COURT: All right. 9:15 tomorrow. I thank  
14 everyone for their cooperation.

15 MR. PAUL: Your Honor, I know it's late in the day,  
16 but rather than put in a submission, I would just like for ten  
17 minutes to argue the issue of cross-examination versus direct  
18 of Mr. Fino.

19 THE COURT: Yes, of course. Go ahead.

20 I do have a sentencing that's been waiting outside.

21 MR. PAUL: I will be very brief.

22 The only thing I would point out to the Court, in  
23 addition to what we argued the other day, is that basically the  
24 cases show -- that I have been able to find anyway -- with  
25 regard to one case specific, *Ellis v. City of Chicago*, which is



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1 cited at 667 F.2d 606, from the Seventh Circuit, where it talks  
2 about Rule 611(c), it says: The drafters of Rule 611(c),  
3 however, determined that these limitations -- that were  
4 apparently present before 611(C) -- represented an unduly  
5 narrow concept of those who may safely be regarded as hostile  
6 without further demonstration.

7 THE COURT: That's why there was a change in 611(c).

8 (Continued on next page)

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1 MR. PAUL: Correct. It says the --

2 THE COURT: That is why they added adverse party or  
3 witness identified with an adverse party.

4 MR. PAUL: Correct. My point to the court is quite  
5 frankly that I don't see how Finocchiaro is anything but a  
6 witness associated or with the adverse party being the  
7 government. Simply by looking at his cooperation agreement, it  
8 specifies a number of things he must do that require his  
9 cooperation in return for the government providing a letter to  
10 the sentencing court, your Honor being that Judge.

11 THE COURT: Let me see his agreement.

12 MR. PAUL: Sure.

13 THE COURT: Somebody should let me see it.

14 (Off-the-record discussion)

15 THE COURT: May I have a clean copy from the  
16 government. Go ahead, sir.

17 MR. PAUL: The issue is that Ellis in particular said  
18 it is not necessary for there to be actual hostility. I think  
19 the government is relying on the fact he is voluntarily coming  
20 forward and he is going to be testifying voluntarily and  
21 answering my questions.

22 THE COURT: You subpoenaed him, correct?

23 MR. PAUL: Yes. As you said, witnesses are subpoenaed  
24 every day. I don't know if that necessarily means anything  
25 other than he is required to be in court. I don't see how he

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1 is not a party affiliated and associated with the government,  
2 given the nature of his cooperation agreement, being that he  
3 had proffered even without an attorney being present, being  
4 that he is under this cooperation agreement.

5 I will cite a few other cases. U.S. v. Bryant, 461  
6 F.2d 912, which is a 2006 case in the U.S. Court of Appeals  
7 from the Sixth Circuit, where it talks about where the witness  
8 was closely identified with the interest of the government.

9 Another case is Clinigan, C L I N I G A N, versus USA,  
10 400 Fed.2d 849, a Fifth Circuit case, 1968.

11 U.S. v. Freeman, 302 F.2d 347 (1962).

12 All of these cases state that it is not necessary to  
13 show the hostility of the witness for your Honor to determine  
14 that he is, in fact, affiliated or associated with the  
15 government in this case. I can't see how a cooperating witness  
16 who is signed on as a cooperating witness, who is going to  
17 testify before the government decided not to call him as their  
18 own witness and, in fact, was proffered three days before in  
19 preparation for his testifying, the fact that they have chosen  
20 not to call him as their witness should limit me with regard to  
21 my calling him as a witness and not being able to present his  
22 testimony by cross instead of direct.

23 THE COURT: I understand.

24 MS. FLETCHER: Your Honor, the government endeavored  
25 to find a case addressing exactly the question that your Honor

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1 had posed; in other words, whether someone who is a signed up  
2 cooperating witness is de facto identified with an adverse  
3 party for the purposes of Rule 611 (c). We didn't find any  
4 cases under that particular fact pattern. I don't understand  
5 Mr. Paul to be saying that any of his cases are along that  
6 factual pattern.

7           The case the government did find and cited in its  
8 letter is an 11th Circuit case, United States v. Diaz. In that  
9 case, the government didn't offer the witness a cooperation  
10 agreement, but instead provided the witness with immunity. The  
11 witness testified for the government, and the Court, the  
12 District Court, still declined to rule that that witness was  
13 identified with an adverse party once defense counsel in that  
14 case sought to make the witness his own.

15           There is simply no basis here, your Honor, for what  
16 Mr. Paul has argued is the law, i.e., the cooperator is  
17 identified with the government. In fact, the factual  
18 circumstances here make clear that that is not the case. The  
19 government determined not to call Mr. Finocchiaro, and now Mr.  
20 Paul, ostensibly because he believed Mr. Finocchiaro has  
21 relevant and helpful testimony for his client, has decided to  
22 call that witness.

23           There is simply no reason to let Mr. Paul begin his  
24 questioning of Mr. Finocchiaro by treating him as a hostile  
25 witness. I expect Mr. Finocchiaro will answer his questions in

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1 precisely the same way he would have answered the government's  
2 questions on cross.

3 While Mr. Finocchiaro had limited interaction with  
4 Mr. Paul's client, Mr. Finocchiaro was friendly with the other  
5 defendants in this case even after the breakdown of the  
6 relationship between Bill Sinclair and Arash Ketabchi. Michael  
7 Finocchiaro remained friends with Arash Ketabchi. He has years  
8 of interaction with these people preceding his months of  
9 proffering with the government.

10 If anything, he remains adverse to the government. He  
11 still is on the opposite side of the "V" to the government. To  
12 the extent he may have been willing to testify on behalf of the  
13 government in this case, the government has told him we do not  
14 want his testimony.

15 MR. PAUL: That is interesting. He may have been  
16 willing to testify. He is under a cooperation agreement with  
17 the government. That is --

18 THE COURT: I understand everybody's point. I am  
19 looking at the cooperation agreement. "Shall truthfully  
20 testify before the grand jury and at any trial and other court  
21 proceeding with respect to any matters about which this office  
22 may request his testimony."

23 I am going to look at these cases, okay? We found a  
24 couple which are not, also not directly on point, but it  
25 suggests to me that he is not hostile unless and until he shows

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1 his hostility. The language of 611 suggests that as well.

2 Leading questions should not be used on direct exam  
3 except as necessary to develop the witness's testimony if he is  
4 not being hostile and is testifying truthfully as he is  
5 obligated to do, not only because it will be under oath, but  
6 because of his cooperation agreement.

7 Then one would think any questions are not necessary  
8 to develop his testimony. It then limits the area in which the  
9 court should allow leading questions. Of course,  
10 cross-examination and what we're talking about, a hostile  
11 witness, an adverse party or a witness identified with an  
12 adverse party is on the same side of the "V." Again there is  
13 no hostility that has come to mind so far. So my preliminary  
14 research suggests that Mr. Paul is not allowed to ask the  
15 leading questions, but I will look at these cases.

16 9:15 tomorrow. Thank you.

17 MS. FLETCHER: Your Honor, I apologize. How does the  
18 court intend to make the parties aware of its ruling on this  
19 issue?

20 THE COURT: Of what?

21 MS. FLETCHER: Of its ruling on this issue?

22 THE COURT: Why should the jury be aware of the ruling  
23 on the issue? He is going to ask whatever questions, type of  
24 questions are permitted. I should also say that Rule 611  
25 provides that my obligation is to exercise reasonable control,

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1 so I have the ability to decide what is appropriate under the  
2 law and under 611.

3 MS. FLETCHER: We would agree, your Honor. The  
4 government was inquiring as to how the court intended to advise  
5 the parties of its ruling with respect to this issue.

6 THE COURT: At 9:14 I'll give you my ruling. I assume  
7 you don't want it after examination begins, okay?

8 MS. FLETCHER: Thank you.

9 MR. SCHMIDT: I do have actually a question, Judge,  
10 that if the government is going to be using or adopting him as  
11 its witness, just even the expression that they could adopt him  
12 as their witness does I think somewhat change the dynamic.  
13 Obviously, if they adopt him as their witness, then there is no  
14 question that we can cross-examine him.

15 The fact is that they are discussing adopting him as  
16 their witness seems to me as evidence that that witness is  
17 identifiable with the government. We'll wait and see.

18 THE COURT: All right.

19 MS. FLETCHER: It means only the government  
20 anticipates the possibility that it may wish to question him  
21 beyond the scope.

22 THE COURT: I understand. I am not in the habit of  
23 determining things that don't need determination. See  
24 everybody tomorrow.

25 (Court adjourned until Friday, November 2, 2018)

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